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08:21AM

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CISCO SYSTEMS, INC.,   )   CV-14-5344-BLF
)
              PLAINTIFF,   )   SAN JOSE, CALIFORNIA
)
         VS.   )   NOVEMBER 30, 2016
)
ARISTA NETWORKS, INC.,   )   VOLUME 5
)
              DEFENDANT   )   PAGES 820-1114
)

                 TRANSCRIPT OF PROCEEDINGS
       BEFORE THE HONORABLE BETH LABSON FREEMAN
              UNITED STATES DISTRICT JUDGE

    A P P E A R A N C E S:

    FOR THE PLAINTIFF: DAVID A. NELSON
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                        CHICAGO, IL 60661

    FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                        BY: SEAN PAK
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                        SAN FRANCISCO, CALIFORNIA 94111

                 APPEARANCES CONTINUED ON NEXT PAGE

    OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                              CERTIFICATE NUMBER 13185

       PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
          TRANSCRIPT PRODUCED WITH COMPUTER

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1          APPEARANCES (CONTINUED)

2          FOR THE DEFENDANT:  KEKER & VAN NEST, LLP
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1	SAN JOSE, CALIFORNIA NOVEMBER 30, 2016
2	P R O C E E D I N G S
3	(WHEREUPON, COURT CONVENED AND THE FOLLOWING PROCEEDINGS

08:31AM 4   WERE HELD OUT OF THE PRESENCE OF THE JURY:)

08:31AM 5   THE COURT: ALL RIGHT. LET'S SEE, WHERE CAN I START

08:31AM 6   HERE TODAY? YOU UTTERLY FLUMMOXED ME.

08:31AM 7   I DON'T HAVE THE CAPABILITY OF MANAGING THOUSANDS OF PAGES

08:31AM 8   ON MY IPAD, I JUST CAN'T DO IT, SO I HAVE OPENED AND LOOKED AT

08:31AM 9   EACH OF THE DOCUMENTS.

08:31AM 10   I DON'T KNOW WHAT I'M LOOKING AT BECAUSE I DON'T KNOW WHAT

08:31AM 11   THEY'RE OFFERED FOR, AND I HAVE NO CONTEXT FOR THEM.

08:31AM 12   SO I AM FULLY PREPARED TO DEVOTE AS MUCH TIME TO THE

08:31AM 13   OBJECTIONS AS YOU WANT, AND I WILL DO MY BEST TO LOCATE THE

08:31AM 14   DOCUMENTS AS WE SPEAK ABOUT THEM. BUT THEY ARE NECESSARILY

08:31AM 15   SENT TO ME THROUGH ABOUT EIGHT SEPARATE E-MAILS AND NOT IN A

08:32AM 16   CHRONOLOGICAL ORDER, NOR ARE THE OBJECTIONS IN A CHRONOLOGICAL

08:32AM 17   ORDER.

08:32AM 18   AND SO ALL I COULD DO IN READING THEM WAS TO MAKE A

08:32AM 19   HANDWRITTEN LIST AND CHECK THEM OFF WHEN I FOUND THEM.

08:32AM 20   SO I DON'T KNOW WHAT TO SAY. I ALSO WOULD LIKE TO RETURN

08:32AM 21   TO CISCO THIS DOCUMENT WHICH I THINK IS HIGHLY CONFIDENTIAL AND

08:32AM 22   NO LONGER THE SUBJECT OF AN OBJECTION.

08:32AM 23   SO I DON'T WANT IT IN MY HANDS.

08:32AM 24   MR. PAK: THANK YOU, YOUR HONOR.

08:32AM 25   THE COURT: YOU CAN DROP IT ON THE STREET, I DON'T

08:32AM 1   WANT TO.

08:32AM 2   MR. PAK: IT SAYS SOURCE CODE ON IT SO I SHOULD TAKE

08:32AM 3   GOOD CARE.

08:32AM 4   THE COURT: THAT'S RIGHT.

08:32AM 5   SO I THINK WE CAN START, ACTUALLY MR. VAN NEST, WITH THE

08:32AM 6   FIRST OBJECTION WHICH DIDN'T HAVE THE DIFFICULTY THAT I'VE JUST

08:32AM 7   HAD A MELT DOWN ABOUT, AND THAT WOULD BE MR. BETTADAPUR'S

08:32AM 8   PRESENCE

08:32AM 9   MR. VAN NEST: THAT'S EXACTLY WHERE I WAS GOING TO

08:32AM 10   START BECAUSE HE'S IN THE ORDER OF WITNESSES FOR TODAY, JUST SO

08:32AM 11   WE GET HIM CLEANED OUT, HE'S FIRST SO MR. KRISHNAN IS GOING TO

08:32AM 12   ADDRESS HIM BECAUSE HE'S A LITTLE MORE SIMPLE.

08:33AM 13   THE COURT: HE MOST DEFINITELY IS.

08:33AM 14   MR. KRISHNAN: GOOD MORNING, YOUR HONOR.

08:33AM 15   THE COURT: OKAY. I THOUGHT YOUR OBJECTION WAS

08:33AM 16   CLEARLY STATED SO WHAT ELSE WOULD YOU LIKE ME TO KNOW BEFORE I

08:33AM 17   TURN IT OVER TO MR. NELSON AND MR. PAK?

08:33AM 18   MR. KRISHNAN: WELL, THERE ARE TO TWO ISSUES, I WANT

08:33AM 19   TO PUT ON YOUR RADAR A LARGER ISSUE THAT WILL PROBABLY COME UP

08:33AM 20   LATER ON WHICH IS THAT CISCO IS PUTTING FORTH THE ASSERTION

08:33AM 21   THAT THEY PRACTICED THE '526 PATENT AND THEIR PRODUCT IOS XR.

08:33AM 22   THEIR EXPERT, DR. JAFFE PUT IN A VERY, VERY SPARSE

08:33AM 23   FOUR-PAGE CHART IN HIS EXPERT REPORT WITH PRACTICALLY NO

08:33AM 24   ANALYSIS, AND IT CONCERNS US. HE WASN'T ABLE TO TALK ABOUT

08:33AM 25   MUCH AT HIS DEPOSITION, HE SAID HE WOULD HAVE TO LOOK AT THE

08:33AM   1   UNDERLYING DOCUMENTS CITED IN THE CHART.

08:33AM   2   THE COURT: THE CHART WAS NOT HIS OWN.

08:33AM   3   MR. KRISHNAN: THE CHART WAS LARGELY NOT HIS OWN, IT

08:33AM   4   STARTED FROM A CHART THAT CISCO HAD DEVELOPED, AND

08:33AM   5   MR. BETTADAPUR IN PARTICULAR.

08:33AM   6   AND SO THE LARGER ISSUE THAT YOU SHOULD BE AWARE OF THAT

08:34AM   7   WILL PROBABLY COME UP IS THAT WE ARE WORRIED THAT CISCO IS

08:34AM   8   TRYING TO GET IN, BASICALLY, EXPERT TESTIMONY THROUGH

08:34AM   9   MR. BETTADAPUR ABOUT THE --

08:34AM 10   THE COURT: OKAY. AND I DON'T KNOW WHAT

08:34AM 11   MR. BETTADAPUR'S POSITION WITH THE COMPANY IS -- CISCO IS.

08:34AM 12   MR. KRISHNAN: CISCO MAY BE ABLE TO ELABORATE A

08:34AM 13   LITTLE MORE ON THAT.

08:34AM 14   THE COURT: I DON'T KNOW WHO THESE PEOPLE ARE.

08:34AM 15   MR. KRISHNAN: UNDERSTOOD.

08:34AM 16   THE COURT: AND YOUR OBJECTION TODAY, IT'S WELL

08:34AM 17   STATED, IT'S VERY CLEAR. I WILL BE INTERESTED TO HEAR OF ANY

08:34AM 18   WORK AROUND ON THAT BECAUSE IT SEEMED PRETTY STRAIGHTFORWARD.

08:34AM 19   WHO MIGHT I HEAR FROM?

08:34AM 20   MR. NELSON: YOUR HONOR, MR. JAFFE IS GOING TO.

08:34AM 21   THE COURT: THANK YOU, GOOD MORNING.

08:34AM 22   MR. JAFFE: GOOD MORNING, YOUR HONOR.

08:34AM 23   SO THERE ARE A FEW ISSUES TO ADDRESS WITH MR. BETTADAPUR.

08:34AM 24   LET ME START FIRST WITH THE DISCLOSURE ISSUES THAT THEY RAISED.

08:34AM 25   SO THE DOCUMENTS THEY ARE GOING TO TESTIFY ABOUT, HE WAS

08:34AM 1   DISCLOSED TO TALK ABOUT THE EXTENSIBILITY OF OUR OPERATING

08:34AM 2   SYSTEMS AND THESE DOCUMENTS FALL WITHIN THAT SCOPE. SO THERE'S

08:35AM 3   NO DISCLOSURE ISSUE THERE. BUT WHAT I WANT TO FUNDAMENTALLY

08:35AM 4   BRING UP IS THAT HE IS GOING TO BE REBUTTING TESTIMONY THAT

08:35AM 5   ARISTA HAS ALREADY PUT AT ISSUE.

08:35AM 6   SO IF YOU LOOK AT MR. VAN NEST'S OPENING, HE PUT UP A

08:35AM 7   PATENT FROM CISCO.

08:35AM 8   THE COURT: OKAY, WELL MR. VAN NEST FORTUNATELY ISN'T

08:35AM 9   OFFERING ANY TESTIMONY IN THE CASE. SO WE DON'T -- YOU ARE NOT

08:35AM 10   REBUTTING ANYTHING YET.

08:35AM 11   MR. JAFFE: NO, I UNDERSTAND. BUT HE PUT UP A PATENT

08:35AM 12   FROM CISCO AND PUT THAT AT ISSUE, AND THE PATENT IS ACTUALLY

08:35AM 13   MR. BETTADAPUR'S PATENT. HE'S A NAMED INVENTOR ON THAT PATENT.

08:35AM 14   AND THEY ARE TRYING TO SAY IT'S NOT AT ISSUE ANYMORE BUT THEY

08:35AM 15   PUT IT AT ISSUE FOR PURPOSES --

08:35AM 16   THE COURT: WHICH PATENT?

08:35AM 17   MR. JAFFE: IT'S EXHIBIT 5001.

08:35AM 18   MR. KRISHNAN: THE '886 PATENT.

08:35AM 19   THE COURT: WHICH IS NOT A SUBJECT OF THIS CASE.

08:35AM 20   MR. JAFFE: THAT'S RIGHT.

08:35AM 21   THE COURT: SO WHY ARE WE GOING DOWN THAT ROAD AT

08:35AM 22   ALL?

08:35AM 23   MR. JAFFE: I MEAN, MR. VAN NEST THINKS IT'S RELEVANT

08:35AM 24   TO THE COPYRIGHT BECAUSE OF THE STATEMENT IN THE -- THAT'S

08:35AM 25   HIGHLIGHTED HERE ON THE SCREEN RIGHT NOW BECAUSE OF THE MANY --

08:35AM 1   THEY CONTEND THAT WHERE IT SAYS MANY COMPANIES NOW STRIFE TO

08:36AM 2   SUPPORT SOME VARIATION ON IOS, THEY CONTEND THAT THAT'S

08:36AM 3   RELEVANT FOR THEIR FAIR USE DEFENSE.

08:36AM 4   AND THIS IS A PATENT THAT WAS INVENTED BY MR. BETTADAPUR

08:36AM 5   AND HE HAS PERSONAL KNOWLEDGE REGARDING WHAT HE INTENDED WHEN

08:36AM 6   HE WROTE THAT.

08:36AM 7   THE COURT: IS HE DISCLOSED ON ANY OF IS THIS.

08:36AM 8   MR. JAFFE: HE'S A NAMED INVENTOR ON THE '886 PATENT

08:36AM 9   AND HE'S BEEN DISCLOSED ON THAT THROUGH FACT DISCOVERY.

08:36AM 10   THE COURT: HE MAY BE A COMPETENT WITNESS TO TESTIFY

08:36AM 11   ON THE SUBJECT MATTER, I DON'T THINK THAT'S THE NATURE OF THE

08:36AM 12   OBJECTION HERE. WE ARE DEALING WITH DISCLOSURES.

08:36AM 13   AND I MEAN, IF YOU OBJECT TO ARISTA PUTTING ON CERTAIN

08:36AM 14   EVIDENCE IN ITS FAIR USE DEFENSE, THAT'S FINE. BUT THAT'S NOT

08:36AM 15   WHAT WE'RE HEARING ABOUT TODAY.

08:36AM 16   AND WE'RE DEALING WITH YOUR CASE IN CHIEF AND UNTIL THERE'S

08:36AM 17   EVIDENCE TO REBUT, YOU ARE BOUND BY YOUR DISCLOSURES

08:36AM 18   MR. JAFFE: LET ME ACTUALLY RAISE TWO ISSUES HERE.

08:36AM 19   NUMBER ONE IS HE WAS AFFIRMATIVELY DESCRIBED ON THE

08:36AM 20   EXTENSIBILITY OF CISCO'S OPERATING SYSTEM. BOTH THE '886

08:37AM 21   PATENT AND THE DOCUMENTS HE WAS DISCLOSED ON RELATE TO THIS

08:37AM 22   EXTENSIBILITY CONCEPT. SO WE THINK HE'S FAIRLY DISCLOSED

08:37AM 23   WITHIN THAT.

08:37AM 24   BUT THEN IN TERMS OF YOUR HONOR'S COMMENT ABOUT WHAT

08:37AM 25   EVIDENCE HAS COME IN, THEY ASKED MR. LOUGHEED YESTERDAY, THEY

08:37AM 1   PUT AN E-MAIL AUTHORED BY MR. BETTADAPUR IN FRONT OF

08:37AM 2   MR. LOUGHEED AND SAID, YOU KNOW, WAS MR. BETTADAPUR, WAS HE

08:37AM 3   JUST WRONG WHEN HE WROTE THESE THINGS. AND THEY ELICITED THAT

08:37AM 4   TESTIMONY AND PUT WHAT HE SAID AND WHAT ME MEANT AT ISSUE IN

08:37AM 5   THIS CASE.

08:37AM 6   AND NOW THEY WANT TO COME BACK AND SAY, WE DO NOT KNOW

08:37AM 7   ABOUT HIM, HE HAD NO IDEA THAT HE HAD RELEVANT KNOWLEDGE ABOUT

08:37AM 8   THESE ISSUES WHEN THEY ARE ACTUALLY BRINGING THIS TESTIMONY IN.

08:37AM 9   THE COURT: OKAY. BUT LET'S JUST TALK ABOUT THE

08:37AM 10   OBJECTION ITSELF.

08:37AM 11   THE FIRST OBJECTION IS THAT YOU'VE IDENTIFIED THE WITNESS

08:37AM 12   TO TESTIFY ABOUT THE USE OF THE '526 PATENTED TECHNOLOGY IN

08:37AM 13   CISCO'S PRODUCTS.

08:37AM 14   AND I WAS PROVIDED A PORTION OF MR. BETTADAPUR'S DEPOSITION

08:37AM 15   WHERE HE DISCLAIMED ANY PERSONAL KNOWLEDGE.

08:37AM 16   AND IN FACT, I THINK HE WAS GRACIOUS IN SPECULATING ABOUT

08:38AM 17   TRYING TO DO HIS COMPANY GOOD IN HIS DEPOSITION AND TO GUESS

08:38AM 18   WHAT PRODUCTS IT MIGHT BE, AND CLEARLY WAS UNABLE TO GIVE THAT

08:38AM 19   TESTIMONY. SO AS TO THE FIRST TOPIC I'M NOT GOING TO ALLOW HIM

08:38AM 20   TO GIVE THAT TESTIMONY.

08:38AM 21   YOU SEEM TO BE COMING IN TODAY WITH AN ENTIRELY DIFFERENT

08:38AM 22   REASON FOR HIS TESTIMONY. THE SECOND DISCLOSURE FROM YOUR

08:38AM 23   TRIAL WITNESS LIST WAS THAT HE WOULD TESTIFY ABOUT THE

08:38AM 24   IMPORTANCE OF THE '526 PATENT TECHNOLOGY FOR CREATING

08:38AM 25   EXTENSIBLE OPERATING SYSTEMS AND HE WAS NEVER DISCLOSED FOR

08:38AM 1   THAT PURPOSE.

08:38AM 2   SO THIS IS AN OBJECTION TO YOUR TRIAL WITNESS LIST

08:38AM 3   DISCLOSURE, AND I DON'T -- I MEAN, YOU ARE NOW COMING IN TRYING

08:38AM 4   TO SEIZE ON COMMENTS MR. VAN NEST MAY HAVE MADE ABOUT THE

08:38AM 5   COPYRIGHT CASE AND HOW MR. BETTADAPUR MAY REBUT SOME OF THAT

08:38AM 6   EVIDENCE UNTIL ARISTA HAS THE OPPORTUNITY TO PUT EVIDENCE INTO

08:38AM 7   THE CASE, I'M NOT SEEING ANY NEED FOR REBUTTAL.

08:39AM 8   SO I THINK WE ARE JUST NOT THERE NOW, THIS IS YOUR CASE IN

08:39AM 9   CHIEF.

08:39AM 10   AND YOU KNOW REBUTTAL HAS A DIFFERENT SET OF RULES, BUT I'M

08:39AM 11   NOT AT REBUTTAL YET AND YOU'RE NOT AT REBUTTAL.

08:39AM 12   SO I -- YOU KNOW, I'M NOT GOING TO ALLOW, I'M CERTAINLY NOT

08:39AM 13   GOING TO ALLOW HIM TO TESTIFY ABOUT THE FIRST CATEGORY BECAUSE

08:39AM 14   HIS DEPOSITION MAKES IT CLEAR HE'S NOT THE PROPER WITNESS, EVEN

08:39AM 15   THOUGH YOU HAD DESIGNATED HIM AS A 30(B)(6) WITNESS ON THE

08:39AM 16   TOPIC, WHICH IS FINE TAT HIS DEPOSITION.

08:39AM 17   THESE THINGS HAPPEN ALL THE TIME, HOW MANY TIMES HAVE

08:39AM 18   YOU -- COMPANIES DO THE BEST THEY CAN WITH THEIR 30(B)(6)

08:39AM 19   DESIGNATIONS, THAT'S FINE. YOU COULD HAVE DESIGNATED SOMEONE

08:39AM 20   ELSE AT THAT POINT, BUT HERE WE ARE.

08:39AM 21   SO ON THE SECOND CATEGORY I DON'T -- I MEAN, YOU ARE

08:39AM 22   SHOWING ME THE '886 PATENT, THIS IS ABOUT -- THE DISCLOSURE WAS

08:39AM 23   ABOUT THE IMPORTANCE OF THE '526 PATENTED TECHNOLOGY FOR

08:39AM 24   CREATING EXTENSIBLE OPERATING SYSTEMS, AND --

08:39AM 25   MR. JAFFE: YOUR HONOR, I HAVEN'T ACTUALLY GOTTEN TO

08:40AM 1   THE 30(B)(6) PART YET, SO IF I MAY ADDRESS THAT BRIEFLY.

08:40AM 2   THE COURT: OKAY. I USUALLY START -- I NEED YOU TO

08:40AM 3   ARGUE THE ISSUES PUT BEFORE THE COURT.

08:40AM 4   MR. JAFFE: SURE.

08:40AM 5   THE COURT: SO LET'S HEAR THAT.

08:40AM 6   MR. JAFFE: SO ON THE 30(B)(6) ISSUE THEY CITED THAT

08:40AM 7   DEPOSITION TESTIMONY. IF YOU LOOK AT LITERALLY THE NEXT

08:40AM 8   QUESTION THAT HE ASKS HIM HE SAYS THAT SOME ASPECTS OF

08:40AM 9   PRACTICED BY IOS XR.

08:40AM 10   MR. KRISHNAN ASKED HIM HOW DOES IT PRACTICE ANY ASPECTS, HE

08:40AM 11   PROVIDES ANOTHER ANSWER, HE PROVIDES ANOTHER ANSWER. WE ARE

08:40AM 12   NOT EXPECTING HIM TO TESTIFY IN ANY MORE DETAIL ABOUT HOW THE

08:40AM 13   LIMITATIONS OF THE CLAIM MAP UP.

08:40AM 14   THE COURT: THERE'S NO FOUNDATION.

08:40AM 15   YOU KNOW, THIS DEPOSITION, I DID READ ALL OF THAT. AND I

08:40AM 16   KNOW HE KIND OF CHANGES THE TENOR OF HIS TESTIMONY, BUT THAT'S

08:40AM 17   BUILT ON THE FOUNDATION, IN MY VIEW, OF HIM BASICALLY SAYING, I

08:40AM 18   DON'T HAVE A CLUE.

08:40AM 19   AND THEN IN MY VIEW, THE ONLY PROPER INFERENCE TO DRAW FROM

08:40AM 20   THE REMAINDER OF HIS TESTIMONY IS PURE SPECULATION BY A HIGHLY

08:40AM 21   PROFESSIONAL INDIVIDUAL WHO CAN USE THE PROPER TERMS TO MAKE

08:40AM 22   HIMSELF SOUND PERSUASIVE BUT IT'S BUILT ON THE FOUNDATION OF I

08:41AM 23   DON'T KNOW, I DON'T HAVE A CLUE.

08:41AM 24   SO I JUST, I'M NOT GOING TO ALLOW HIM TO TESTIFY ON THAT

08:41AM 25   TOPIC.

08:41AM 1   MR. JAFFE: UNDERSTOOD, YOUR HONOR.

08:41AM 2   SO IF I MAY MAKE ONE LAST QUESTION WHICH IS, IF HE'S NOT

08:41AM 3 ALLOWED TO TESTIFY ON HOW HE PRACTICED THE '526 HE DOES HAVE

08:41AM 4 PERSONAL KNOWLEDGE ON THE IOS XR, WHICH IS THAT OPERATING

08:41AM 5 SYSTEM, AND IF HE MAY TESTIFY AS TO THE STRUCTURE AND OPERATION

08:41AM 6 OF THAT. BECAUSE WE HAVE EXPERT TESTIMONY WHICH MAPS IT UP TO

08:41AM 7 THE CLAIMS AND MR. KRISHNAN MENTION, HE MENTIONED THAT THE

08:41AM 8 EXPERT REPORT, THAT'S UNDISPUTED.

08:41AM 9   SO THE REASON HE DIDN'T PUT IN A LONG EXPERT REPORT IS

08:41AM 10 BECAUSE THEY DIDN'T DISPUTE WE PRACTICE. THEY DIDN'T PUT IN AN

08:41AM 11 EXPERT ABOUT THAT AND THERE'S NO OPPOSING TESTIMONY THAT HE

08:41AM 12 PRACTICED THIS PATENT, SO THERE'S A REASON THAT DR. JAFFE

08:41AM 13 DIDN'T PUT A LONG REPORT IN THERE BECAUSE HE DIDN'T NEED TO.

08:41AM 14   THE COURT: OKAY. WELL, THAT'S YOUR CHOICE.

08:41AM 15   MR. JAFFE: SO MAY HE TESTIFY ABOUT IOS XR? I DON'T

08:41AM 16 KNOW IF THERE'S A DISPUTE THERE.

08:41AM 17   THE COURT: I DON'T ACTUALLY KNOW -- AGAIN, WE ARE

08:41AM 18 DEALING WITH DISCLOSURES AND IT'S CERTAINLY, IT'S A TOPIC IN

08:42AM 19 THE CASE.

08:42AM 20   AND AGAIN -- SO I LOOKED AT, AND I DO NOT BRING IT WITH ME,

08:42AM 21 I DIDN'T PRINT IT OUT, MAYBE YOU GAVE THAT TO ME MAYBE THAT WAS

08:42AM 22 YOUR EXHIBIT A WAS THE DISCLOSURE. I HAVE YOUR RULE 26

08:42AM 23 DISCLOSURE AND HE WAS ONLY DISCLOSED ON THE '886 WHICH IS NO

08:42AM 24 LONGER PART OF THE CASE, SO THAT DOESN'T HELP YOU.

08:42AM 25   AND AS A TRIAL WITNESS, HE WAS, THAT'S WHAT I HAD LOOKED AT

08:42AM 1   BUT DIDN'T PRINT OUT BUT I THINK IT'S PROPERLY SUMMARIZED IN

08:42AM 2   THE MOVING PAPERS HERE. YOU DISCLOSED HIM ON YOUR TRIAL

08:42AM 3   WITNESS LIST FOR THESE TWO TOPICS, NEITHER OF WHICH ARE WHAT

08:42AM 4   YOU ARE NOW OFFERING HIM FOR.

08:42AM 5   MR. JAFFE: THOSE ARE ACTUALLY WHAT WE ARE TRYING TO

08:42AM 6   OFFER HIM FOR. BECAUSE THE WAY THAT CISCO PRACTICES THE '526

08:42AM 7   PATENT IS USING THIS IOS XR OPERATING SYSTEM THAT HE HAS

08:42AM 8   PERSONAL KNOWLEDGE ABOUT. SO --

08:42AM 9   THE COURT: SO THE SECOND TOPIC, WHAT MR. KRISHNAN

08:42AM 10 TOLD ME IN HIS PAPERS WAS THAT YOU MADE NO PRIOR DISCLOSURE OF

08:43AM 11 MR. BETTADAPUR ON THIS ISSUE ANYWHERE.

08:43AM 12   SO IF YOU WOULD LIKE TO POINT THAT OUT TO ME, I WOULD BE

08:43AM 13 GLAD TO LOOK AT IT.

08:43AM 14   MR. JAFFE: YES, I'M HAPPY TO, WHICH IS HE WAS

08:43AM 15 DESIGNATED AS A 30(B)(6), AND MR. KRISHNAN DEPOSED

08:43AM 16 MR. BETTADAPUR IN HIS DEPOSITION ON THIS EXACT --

08:43AM 17   THE COURT: ON THE IMPORTANCE OF THE '526? OH, I'M

08:43AM 18 SORRY.

08:43AM 19   LET ME BE CLEAR. ON THE 30(B)(6), I'M NOT ALLOWING IT

08:43AM 20 BECAUSE THE WITNESS HAS DISCLAIMED PERSONAL KNOWLEDGE IN HIS

08:43AM 21 DEPOSITION.

08:43AM 22   THERE WAS A SECOND MATTER THAT YOU DISCLOSED THIS WITNESS

08:43AM 23 FOR IN YOUR TRIAL WITNESS DISCLOSURE THAT WAS SUBMITTED JUST IN

08:43AM 24 THE PRECLUDE TO TRIAL AND THAT WAS ON THE IMPORTANCE OF THE

08:43AM 25 '526 PATENT TECHNOLOGY FOR CREATING EXTENSIBLE OPERATING

08:43AM 1   SYSTEMS.

08:43AM 2   THE ARGUMENT BY ARISTA IS THAT CISCO HAS NEVER DESIGNATED

08:43AM 3   MR. BETTADAPUR ON THIS TOPIC.

08:43AM 4   SO WHEN DID THAT HAPPEN? WHEN WAS THAT DESIGNATION?

08:43AM 5   MR. JAFFE: SO HIS DESIGNATIONS WERE ON HOW CISCO

08:43AM 6   USES THE '526 PATENT IN ITS OPERATING SYSTEMS. AND THE

08:44AM 7   STRUCTURE AND OPERATION OF THOSE OPERATING SYSTEMS.

08:44AM 8   THE COURT: OKAY.

08:44AM 9   MR. JAFFE: AND SO THE EXTENSIBILITY ISSUE THAT YOU

08:44AM 10   JUST RAISED IT WAS WITHIN THE SCOPE OF HIS 30(B)(6)

08:44AM 11   DESIGNATIONS. WE ARE NOT TRYING TO GO BEYOND THOSE.

08:44AM 12   THE COURT: WELL, IF IT'S NOT BEYOND THE SCOPE OF HIS

08:44AM 13   DEPOSITION TESTIMONY THEN OF COURSE I WILL ALLOW THAT, UNLESS

08:44AM 14   IT'S SOMETHING LIKE WE HAD HERE WHERE THE WITNESS DISCLAIMED

08:44AM 15   PERSONAL KNOWLEDGE.

08:44AM 16   MR. KRISHNAN: YOUR HONOR, THE SECOND ISSUE THAT THEY

08:44AM 17   PUT FORWARD, THE IMPORTANCE OF THE '526 PATENTED TECHNOLOGY FOR

08:44AM 18   CREATING EXTENSIBLE OPERATING SYSTEMS, THAT WAS JUST NOT A

08:44AM 19   DEPOSITION TOPIC. THEY NEVER DESIGNATED HIM ON IT.

08:44AM 20   I ASKED MR. JAFFE ABOUT THIS LAST NIGHT, ABOUT THIS ISSUE

08:44AM 21   YESTERDAY, AND HE WASN'T ABLE TO SAY THAT ON THIS ISSUE HE WAS

08:44AM 22   DESIGNATED AS A 30(B)(6) WITNESS, IT JUST WASN'T AN ISSUE IN

08:44AM 23   THE CASE THAT WE TOOK ANY DISCOVERY ON, THAT HE WAS DISCLOSED

08:44AM 24   ON IN ANY WAY.

08:44AM 25   THIS IS A NEW ISSUE THAT THEY ARE RAISING AFTER DISCOVERY

08:44AM 1   WAS CLOSED AND THEY PUT IT IN THEIR WITNESS DISCLOSURE.

08:45AM 2   THE ONLY REASON WHY WE HAVEN'T RAISED THIS ISSUE EARLIER IS

08:45AM 3   BECAUSE MR. BETTADAPUR HAS ALWAYS BEEN A TANGENTIAL WITNESS

08:45AM 4   BECAUSE HE WAS CLOSED ON THE '886 AND THEY LISTED HIM ON A

08:45AM 5   MAY-CALL WITNESS. ON THE FIRST DAY OF TRIAL THEY TOLD US THEY

08:45AM 6   WILL CALL HIM.

08:45AM 7   SO THIS IS ALL COMING AS A SURPRISE TO US, AND HE CERTAINLY

08:45AM 8   WASN'T DISCLOSED AS A 30(B)(6) WITNESS ON THIS TOPIC.

08:45AM 9   THE COURT: WELL, DO I HAVE THE 30(B)(6) DESIGNATION

08:45AM 10 OF THIS WITNESS SO I CAN SEE IT?

08:45AM 11   MR. JAFFE: I DON'T HAVE THAT RIGHT HERE, I WILL GET

08:45AM 12 THAT FOR YOU.

08:45AM 13   THE COURT: I KNOW IT'S HARD TO HAVE EVERYTHING AT

08:45AM 14 YOUR FINGERTIPS.

08:45AM 15   WELL, I MEAN, I'M GLAD TO LOOK AT THE DESIGNATION AND SEE

08:45AM 16 IF IT'S POSSIBLY THAT BROAD. YOU ARE INDICATING IT WAS NOT THE

08:45AM 17 SUBJECT OF QUESTIONING WHICH LEADS ME TO BELIEVE THAT IT WASN'T

08:45AM 18 UNDERSTOOD TO BE PART OF THE DESIGNATION BECAUSE IT'S BEYOND

08:45AM 19 COMPREHENSION THAT ARISTA COULD MISS THAT.

08:45AM 20   SO IF THEY DIDN'T ASK ABOUT IT, IT PROBABLY WASN'T THERE,

08:45AM 21 BUT I CERTAINLY AM WILLING TO GIVE IT A LOOK.

08:46AM 22   OKAY. LET'S MOVE ON. I AM STILL FEELING THAT I WILL

08:46AM 23 PROBABLY GRANT THE REQUEST THAT HE NOT BE ALLOWED TO TESTIFY.

08:46AM 24   THE ALMEROTH DEMONSTRATIVES, YOU HAVE REDUCED THE SCOPE OF

08:46AM 25 THEM. MR. VAN NEST, IS THIS YOURS?

08:46AM   1   MR. VAN NEST: I WAS JUST GOING TO MAKE ONE QUICK

08:46AM   2   SUGGESTION WHICH IS BEFORE DR. ALMEROTH WE HAVE MR. LANGUAGE

08:46AM   3   AND WE HAVE A COUPLE OPEN ARE ISSUES ON HUAWEI.

08:46AM   4   THE COURT: I THOUGHT THERE WAS NOTHING REMAINING

08:46AM   5   OPEN ON MR. LANG, I MISSED THAT IN THE MOTION. I'M SORRY, I'M

08:46AM   6   UNAWARE OF IT. SO YOU WILL HAVE TO WALK ME THROUGH.

08:46AM   7   MR. VAN NEST: MR. ROSEN IS GOING TO HANDLE THAT

08:46AM   8   BECAUSE HE'S BEFORE ALMEROTH, AND THEN I WILL DO ALMEROTH.

08:46AM   9   THE COURT: SURE.

08:46AM 10   AND THEN I ACTUALLY PRINTED OUT THE PORTION OF MR. LANG'S

08:46AM 11   DEPOSITION BUT I DON'T KNOW WHAT DOCUMENT IT RELATES TO. I

08:46AM 12   THOUGHT THAT WAS OFF.

08:46AM 13   MR. ROSEN: SO WE HAVE -- GOOD MORNING, YOUR HONOR.

08:46AM 14   THIS IS PRETTY STRAIGHTFORWARD.

08:46AM 15   SO FOR MR. LANG, WE HAVE OBJECTIONS TO THREE DOCUMENTS ON

08:47AM 16   HEARSAY GROUNDS, AND THESE ARE 4424, 4673, AND 4674.

08:47AM 17   THE COURT: OKAY. I CERTAINLY LOOKED AT THOSE

08:47AM 18   DOCUMENTS. SO I GUESS I JUST MISSED THAT THAT WAS COMING IN

08:47AM 19   THROUGH -- SO THIS IS -- I'M SORRY, IF I COULD JUST GET THOSE

08:47AM 20   NUMBERS AGAIN.

08:47AM 21   MR. ROSEN: SURE. 4424. 4673, AND 4674.

08:47AM 22   THE COURT: OKAY. SO THE 73 AND 74 DOCUMENTS WERE

08:47AM 23   ESSENTIALLY WHAT I CALLED MEDIA COVERAGE. IS THAT REASONABLE.

08:47AM 24   MR. ROSEN: THAT'S CORRECT.

08:47AM 25   THE COURT: OKAY. AND ACTUALLY, THE 4424 WOULD BE AS

08:47AM   1   WELL, REGARDING THE HUAWEI.

08:47AM   2   MR. ROSEN: YES, ALL THREE ARE.

08:47AM   3   THE COURT: ALL THREE ARE. OKAY. AND YOU OBJECT ON

08:47AM   4   HEARS GROUNDS.

08:47AM   5   MR. ROSEN: CORRECT.

08:47AM   6   THE COURT: MR. PAK?

08:47AM   7   MR. PAK: YES.

08:48AM   8   YOUR HONOR, MR. LANG WORKS IN THE LEGAL DEPARTMENT AND HIS

08:48AM   9   JOB CONSTITUTES A NUMBER OF DIFFERENT TASKS, ONE OF WHICH IS TO

08:48AM 10   KEEP RECORDS, INCLUDING COPYRIGHT REGISTRATIONS BUT ALSO

08:48AM 11   RECORDS RELATING TO LITIGATION INVOLVING INTELLECTUAL PROPERTY.

08:48AM 12   THESE DOCUMENTS WERE CONTEMPORANEOUS RECORDS OF HIS

08:48AM 13   PREDECESSOR, MALIN YIN, WHICH WAS KEPT IN THE RECORDS OF CISCO.

08:48AM 14   THIS PERTAINS DIRECTLY TO SOME OF THE KEY ISSUES IN THE

08:48AM 15   CASE ABOUT THE HUAWEI LITIGATION, THE PRESS COVERAGE ABOUT THAT

08:48AM 16   CASE. IT SHOWS, IN FACT, SETTING ASIDE MR. GIANCARLO'S

08:48AM 17   DECLARATION IN THE COMPLAINT THAT WE WILL TALK ABOUT, THAT

08:48AM 18   THERE WAS PRESS COVERAGE OF THE HUAWEI LITIGATION, WHICH TALKS

08:48AM 19   ABOUT THE SPECIFIC ISSUES IN THAT CASE, INCLUDING THE COPYING

08:48AM 20   OF THE CLI.

08:48AM 21   THE COURT: SO ALL THREE OF -- ALL FOUR OF THESE

08:48AM 22   DOCUMENTS PERTAIN TO THE HUAWEI LITIGATION.

08:48AM 23   MR. PAK: THAT'S RIGHT, YOUR HONOR.

08:48AM 24   THE COURT: I GUESS, AND THIS IS WHY IT WAS SO

08:48AM 25   DIFFICULT FOR ME TO CONSIDER THE DOCUMENTS, SO YOU'RE OFFERING

08:49AM 1   THEM TO SHOW THAT IT WAS KNOWN IN THE INDUSTRY THROUGH PRESS

08:49AM 2   COVERAGE?

08:49AM 3   MR. PAK: YES, YOUR HONOR, NOT OBVIOUSLY FOR THE

08:49AM 4   TRUTH OF THE MATTER ASSERTED, WE ARE JUST SHOWING THAT IN FACT

08:49AM 5   THERE WAS PRESS COVERAGE, THESE ARE BUSINESS RECORDS THAT WAS

08:49AM 6   MAINTAINED, MR. LANG WITH MAKE THE FOUNDATION.

08:49AM 7   THE COURT: IT'S HIS CLIPPING FILE.

08:49AM 8   MR. PAK: YES.

08:49AM 9   THE COURT: WELL, MR. ROSEN, THESE ARE THE KINDS OF

08:49AM 10   THINGS WHERE THE ISSUE IS CISCO, BECAUSE IT DID NOT ASSERT ITS

08:49AM 11   COPYRIGHT, AND NO ONE KNEW THAT IT WAS BAD TO COPY THESE

08:49AM 12   THINGS, THE PRESS COVERAGE, IT CERTAINLY IS PROBATIVE OF THAT

08:49AM 13   PUBLIC STATEMENT OF IT, AND I'M GLAD TO HAVE A LIMITING

08:49AM 14   INSTRUCTION, WHICH I'M SURE YOU COULD SCRATCH OUT RIGHT NOW IF

08:49AM 15   THAT'S COMING TODAY, IT'S NOT A DIFFICULT INSTRUCTION, TO LET

08:49AM 16   THE JURY KNOW THAT THEY ARE TO CONSIDER IT FOR A LIMITED

08:49AM 17   PURPOSE.

08:49AM 18   AND SO I WILL DENY THE MOTION ON THE HEARSAY OBJECTION.

08:50AM 19   NOW, THERE WERE SOME OTHER --

08:50AM 20   MR. ROSEN: THERE ARE TWO OTHER EXHIBITS --

08:50AM 21   THE COURT: ATTACHED TO THAT -- LET'S SEE, I CALLED

08:50AM 22   THAT ITEM NUMBER 6, BUT WE DIDN'T NUMBER THEM. SO LET ME JUST

08:50AM 23   TELL YOU.

08:50AM 24   SO THIS IS ON PAGE 3 AND IT WAS JUST THE NEXT TO THE LAST

08:50AM 25   SECTION. AND WE ALSO HAVE EXHIBIT 159 AND THAT WAS IN THE

08:50AM 1   FIRST E-MAIL AND THESE WERE IN THE LAST E-MAIL, SO I DON'T

08:50AM 2   REMEMBER WHAT THAT ONE WAS, I'M SORRY.

08:50AM 3   MR. ROSEN: SO 159 WAS OFFERED IN CONNECTION WITH

08:50AM 4   MR. BURLEY AND LAST NIGHT CISCO WITHDREW HIM AS A WITNESS.

08:50AM 5   MR. PAK: YES, YOUR HONOR.

08:50AM 6   THE COURT: EXCELLENT. SO THAT'S TAKEN CARE OF.

08:50AM 7   OKAY. ALL RIGHT.

08:50AM 8   SO I WILL DENY THE MOTION BUT ALLOW A LIMITING INSTRUCTION.

08:50AM 9   OKAY. THAT'S FINE.

08:50AM 10   MR. ROSEN: AND NEXT, YOUR HONOR, WE HAVE 4327 WHICH

08:51AM 11   IS EARLIER, AND THIS IS NOT A MEDIA ARTICLE, THIS IS A CISCO

08:51AM 12   POWERPOINT PRESENTATION.

08:51AM 13   THE COURT: RIGHT. RIGHT. I SAW THAT SLIDE DECK.

08:51AM 14   OKAY.

08:51AM 15   MR. PAK: I CAN COMMENT ON THAT YOUR HONOR.

08:51AM 16   THIS IS MR. KATHAIL, PRADEEP KATHAIL WILL BE TESTIFYING

08:51AM 17   TODAY. HE IS THE SENIOR NETWORK OR CHIEF NETWORK ARCHITECT.

08:51AM 18   PART OF HIS JOB RESPONSIBILITY IS TO OVERSEE MANY OF THE

08:51AM 19   INNOVATION PROGRAMS, IN PARTICULAR, HOW TO RE-ARCHITECT THE

08:51AM 20   OPERATING SYSTEM.

08:51AM 21   THAT POWERPOINT WAS A BUSINESS RECORD PRESENTATION TO

08:51AM 22   MR. GIANCARLO AND OTHER EXECUTIVES IN THE COMPANY ABOUT THE

08:51AM 23   SPECIFICS OF THE INNOVATION PROGRAMS AT WORK.

08:51AM 24   THE POWERPOINT IS DATED IN 2007, AND IT IS A BUSINESS

08:51AM 25   RECORD. IT IS THE KIND OF DOCUMENT THAT IS USED ALL THE TIME

08:51AM 1   BY EXECUTIVES TO SHARE INFORMATION ON WHAT TYPE OF --

08:51AM 2   THE COURT: IS THIS THE WITNESS WHO PREPARED THE

08:51AM 3   POWERPOINT?

08:51AM 4   MR. PAK: YES, ABSOLUTELY, THAT'S HIS PRESENTATION.

08:52AM 5   THIS IS NOT AT ALL THE TYPE OF DOCUMENT WHERE WE HAVE ANY

08:52AM 6   QUESTION ABOUT THE REGULAR USE AND BUSINESS RECORDS, OBVIOUSLY

08:52AM 7   EXECUTIVES USE POWERPOINTS ALL THE TIME TO CONVEY INFORMATION.

08:52AM 8   IT'S VERY, VERY PERTINENT TO THIS CASE BECAUSE ONE OF THE

08:52AM 9   ALLEGATIONS THAT WE'VE HEARD IS CISCO DOESN'T HAVE AN

08:52AM 10   INNOVATIVE CULTURE, CISCO DOESN'T INNOVATE. HE IS THE PERSON

08:52AM 11   THAT'S DIRECTLY ABLE TO REBUT THOSE ALLEGATIONS WITH SPECIFIC

08:52AM 12   HISTORICAL EXACT FACTS.

08:52AM 13   THE COURT: HE CAN TESTIFY FROM HIS PERSONAL

08:52AM 14   KNOWLEDGE, THE DOCUMENT JUST SUPPORTS THE FACT THAT HE

08:52AM 15   PRESENTED THIS?

08:52AM 16   MR. PAK: WELL, THE DOCUMENT SUMMARIZES ALL OF THE

08:52AM 17   UNDERLYING INNOVATION PROGRAMS AND IT'S ACTUALLY A HISTORICAL

08:52AM 18   DOCUMENT, IT'S NOT AS IF WE CREATED IN LITIGATION, THIS IS THE

08:52AM 19   TYPE OF INFORMATION THAT'S SHARED.

08:52AM 20   WE HAD A NUMBER OF POWERPOINTS AND OTHER TYPES OF THINGS

08:52AM 21   COME INTO THE RECORD.

08:52AM 22   THE COURT: SURE.

08:52AM 23   MR. PAK: SO I DON'T REALLY UNDERSTAND THE BASIS.

08:52AM 24   THIS IS NOT A POWERPOINT THAT'S BEYOND THE SCOPE OF HIS JOB

08:52AM 25   RESPONSIBILITIES, IT'S KIND OF --

08:52AM 1   THE COURT: SO THE OBJECTION ON LACK OF FOUNDATION I

08:53AM 2   THINK IS, WAS THAT POSED ON THIS ONE? NO, IT WAS NOT. THIS IS

08:53AM 3   JUST THE HEARSAY.

08:53AM 4   MR. ROSEN: CORRECT.

08:53AM 5   THE COURT: WELL, MR. ROSEN, I THINK IT CLEARLY IS A

08:53AM 6   BUSINESS RECORD, I DON'T HAVE A PROBLEM WITH THAT. I THINK

08:53AM 7   THIS IS THE PERSON WHO CREATED IT, HE ACTUALLY CAN GIVE A LOT

08:53AM 8   OF TESTIMONY FROM HIS OWN PERSONAL KNOWLEDGE ABOUT WHY HE

08:53AM 9   PREPARED IT AND THE WHAT IS IN IT, HE DID THE RESEARCH.

08:53AM 10   MR. PAK: ABSOLUTELY, YOUR HONOR.

08:53AM 11   THE COURT: AND THE DOCUMENT ITSELF IS REALLY A --

08:53AM 12   MR. PAK: IT'S ACTUALLY CORROBORATING EVIDENCE OF THE

08:53AM 13   WORK THAT HE DID, RATHER THAN JUST HAVING A WITNESS SAY, BACK

08:53AM 14   IN 2007 I WORKED ON THESE INNOVATION PROGRAMS, WE ACTUALLY HAVE

08:53AM 15   A DOCUMENT I THINK WE SHOULD BE ABLE TO USE THIS ONE.

08:53AM 16   THE COURT: ANYTHING ELSE?

08:53AM 17   MR. ROSEN: NO, YOUR HONOR.

08:53AM 18   THE COURT: OKAY. I'M GOING TO DENY --

08:53AM 19   MR. ROSEN: ONE MERE ISSUE THAT WE HAVE AND

08:53AM 20   UNDERSTANDING ON, I JUST WANT TO CONFIRM THAT UNDERSTANDING FOR

08:53AM 21   803.

08:53AM 22   MR. PAK: I BELIEVE THAT'S NO LONGER IN DISPUTE,

08:54AM 23   YOUR HONOR.

08:54AM 24   THE COURT: THAT WAS AN INDEX. SO I DIDN'T ACTUALLY

08:54AM 25   UNDERSTAND WHAT I WAS LOOKING AT IN 4803, AND IS THIS AN

08:54AM 1   ALMEROTH DOCUMENT?

08:54AM 2   MR. PAK: NO, YOUR HONOR. THIS IS A MR. LANG

08:54AM 3   DOCUMENT.

08:54AM 4   ARISTA ACTUALLY STATED IN ITS OBJECTION --

08:54AM 5   THE COURT: I THOUGHT THAT WAS WITHDRAWN?

08:54AM 6   MR. PAK: THAT'S RIGHT.

08:54AM 7   IT DOES NOT OBJECT TO EXHIBIT 4803, TO THE EXTENT CISCO

08:54AM 8   INTENDS TO HAVE MR. LANG TESTIFY THAT THE DOCUMENTS WERE

08:54AM 9   DEPOSITED WITH THE COPYRIGHT OFFICE AND PUTS ALL THE DEPOSITING

08:54AM 10   MATERIAL INTO EVIDENCE.

08:54AM 11   SO THAT'S WHAT WE INTEND TO DO, YOUR HONOR, SO I DON'T

08:54AM 12   UNDERSTAND THE OBJECTION ON 4803.

08:54AM 13   MR. ROSEN: WELL WE ARE JUST CONCERNED, GIVEN THE

08:54AM 14   SHEER NUMBER OF ENTRIES THAT MR. LANG WILL NOT BE ABLE TO

08:54AM 15   ESTABLISH FOUNDATION FOR EACH ONE OF THESE.

08:54AM 16   MR. PAK: YOUR HONOR, THESE ARE -- JUST TO BE CLEAR,

08:54AM 17   THESE ARE THE -- ALL THE BUSINESS RECORDS THAT EVIDENCE -- AS

08:54AM 18   YOUR HONOR KNOWS, WE HAVE 26 COPYRIGHT REGISTRATIONS AT ISSUE

08:55AM 19   IN THIS CASE. THEY COVER A LONG PERIOD OF TIME WITH LOTS OF

08:55AM 20   DIFFERENT VERSIONS OF THE FOUR OPERATING SYSTEMS.

08:55AM 21   THE COURT: THESE ARE THE REGISTRATIONS.

08:55AM 22   MR. PAK: THAT'S RIGHT, YOUR HONOR.

08:55AM 23   AND WE ARE TRYING TO FIGURE OUT A STREAMLINED FASHION.

08:55AM 24   THERE'S OBVIOUSLY NO DISPUTE ABOUT THE AUTHENTICITY ABOUT THE

08:55AM 25   DOCUMENTS AND THE RELEVANCE.

08:55AM 1   THE COURT: AND YOU'VE DISCLOSED THEM ALL.

08:55AM 2   MR. PAK: OF COURSE. THIS IS AN ISSUE OF, HOW DO WE

08:55AM 3 GET THROUGH THIS PART OF TRIAL AS QUICKLY AS WE CAN.

08:55AM 4   WE WOULD LIKE TO BE ABLE TO USE THE 4803 DOCUMENT TO BE

08:55AM 5 ABLE TO ESTABLISH THAT THESE WERE ALL THE DIFFERENT TYPES OF

08:55AM 6 DOCUMENTS THAT WERE REGISTERED WITH THE COPYRIGHT OFFICE.

08:55AM 7   THE COURT: AND THE JURY IS NOT GOING TO HAVE ALL THE

08:55AM 8 KEGS THEMSELVES OR ARE THEY?

08:55AM 9   MR. PAK: WE CAN MOVE ALL OF THAT INTO EVIDENCE,

08:55AM 10 YOUR HONOR. JUST TO BE CLEAR, IF WE DO THAT, I MAY HAVE A

08:55AM 11 SUGGESTION FOR, YOUR HONOR, IT'S LET LITERALLY BOXES AND BOXES,

08:55AM 12 IT MIGHT FILL THIS ENTIRE ROOM.

08:55AM 13   THE COURT: WELL, LUCKILY WE ARE NOT DEALING WITH

08:55AM 14 PAPER.

08:55AM 15   MR. PAK: SO I THINK WE WANT TO PUT IT ON SOME TYPE

08:55AM 16 OF USB DRIVE OR A COMPUTER THAT THE JURY CAN LOOK AT IF THEY

08:56AM 17 WANT TO, BUT WE WOULD LIKE TO FIGURE OUT AN EFFICIENT MECHANISM

08:56AM 18 TO GET INTO THE RECORD THE 26 COPYRIGHT REGISTRATIONS WHICH

08:56AM 19 CONSIST OF ALL THE DIFFERENT USER MANUALS.

08:56AM 20   THE COURT: AND OF COURSE I'M LOOKING FOR WHERE I

08:56AM 21 WOULD FIND -- THE TROUBLE I HAVE IS THAT IT'S HARD FOR ME TO

08:56AM 22 FIND, I WANT TO LOOK AT IT AGAIN.

08:56AM 23   SO THIS IS 80 PAGES, THIS IS 26 REGISTRATIONS BUT IT'S MORE

08:56AM 24 THAN THAT. THAT'S WHY I WAS REALLY STRUGGLING A LITTLE BIT TO

08:57AM 25 UNDERSTAND, THIS IS A SUMMARY INDEX OF THE REGISTRATIONS.

08:57AM 1   MR. PAK: RIGHT, YOUR HONOR.

08:57AM 2   THE COURT: AND YOU HAVE DESIGNATED EACH ONE AS AN

08:57AM 3   EXHIBIT.

08:57AM 4   MR. PAK: OF COURSE. AND SO THE EXHIBIT NUMBERS ARE

08:57AM 5   IN THE RIGHT HAND COLUMN, YOUR HONOR.

08:57AM 6   IN THIS DOCUMENT YOU CAN SEE IN THE INDEX THERE'S THE

08:57AM 7   DESCRIPTION OF THE DOCUMENT, THE BATES NUMBER SHOWING IT WAS

08:57AM 8   PRODUCED IN THIS CASE. THERE'S A TRIAL EXHIBIT NUMBER ON THE

08:57AM 9   RIGHT-HAND COLUMN.

08:57AM 10   SO THIS IS A SUMMARY OF ALL THE REGISTRATIONS WE HAVE MADE

08:57AM 11   THAT HAVE BEEN PRODUCED IN THIS CASE.

08:57AM 12   THE COURT: SO WHEN YOU SAID 26 REGISTRATIONS --

08:57AM 13   MR. PAK: YES, YOUR HONOR.

08:57AM 14   THERE WERE OFFICIALLY 26 REGISTRATIONS, EACH OF THOSE

08:57AM 15   REGISTRATIONS CONTAINS A NUMBER OF MANUALS AND SOURCE CODE AND

08:57AM 16   THAT'S THE REASON WHY WE HAVE MULTIPLE EXHIBITS.

08:57AM 17   THE COURT: I SEE. GOT IT.

08:57AM 18   MR. PAK: PER REGISTRATION.

08:57AM 19   AND I GUESS I WOULD ASK YOUR HONOR FOR GUIDANCE ON THIS.

08:57AM 20   WE HAVE LITERALLY HUNDREDS OF EXHIBIT NUMBERS THAT CORRESPOND

08:58AM 21   TO --

08:58AM 22   THE COURT: THIS RAISES THE ISSUE AS WELL AND MAYBE

08:58AM 23   IT'S SIMPLE, ON THE SUBMITTING THE WORK AS A WHOLE BECAUSE

08:58AM 24   AFTER THE ELECTRONIC ARTS NINTH CIRCUIT RULING, I SORT OF, I

08:58AM 25   WANT TO MAKE SURE THAT WE HAVE THAT IN, THAT'S YOUR JOB AND YOU

08:58AM 1   KNOW HOW TO DO IT.

08:58AM 2   MR. PAK: SO WOULD YOU LIKE -- HOW WOULD YOU LIKE TO

08:58AM 3   PROCEED BECAUSE WE HAVE MR. LANG, HE'S AVAILABLE TO TESTIFY

08:58AM 4   TODAY. HE IS, SO WE WOULD LIKE TO FIGURE OUT A MECHANISM WHERE

08:58AM 5   HE CAN INTRODUCE INTO THE RECORD, OBVIOUSLY THE ELECTRIC ARTS

08:58AM 6   CASE, THAT WAS AN IMPORTANT ISSUE, SO WE WANT TO MAKE SURE ALL

08:58AM 7   THESE THINGS ARE IN THE RECORD.

08:58AM 8   THE COURT: YEAH.

08:58AM 9   MR. PAK: ON THE OTHER HAND, I GUESS I SUPPOSE HE

08:58AM 10   COULD WALK THROUGH AND JUST DESCRIBE EACH DOCUMENT.

08:58AM 11   THE COURT: SO I MEAN THIS IS REALLY, THIS WE CALL AN

08:58AM 12   INDEX OR SUMMARY DOCUMENT, AND IT IS CLEARLY SUPPORTED BY

08:58AM 13   DOCUMENTATION THAT IS PUBLICLY FILED AVAILABLE, BEEN DISCLOSED,

08:58AM 14   AND WHAT I'M INCLINED TO DO IS, I DON'T ALLOW YOU TO JUST

08:58AM 15   SUBMIT DOCUMENTS WITHOUT THEM COMING THROUGH A WITNESS IN

08:59AM 16   COURT, BUT WE ARE NOT GOING TO DO THAT.

08:59AM 17   SO THE SUMMARY, AND THEN YOU CAN SIMPLY TELL THE JURY THAT

08:59AM 18   EACH OF THESE REGISTRATIONS IS IN EVIDENCE, THEY WILL HAVE IT

08:59AM 19   ELECTRICALLY, I DO NOT WANT THE PAPER IF THE COURTROOM.

08:59AM 20   MR. PAK: THANK YOU, YOUR HONOR.

08:59AM 21   THE COURT: AND I WILL ALLOW THIS ONE, 4803, I'M

08:59AM 22   GOING TO -- I'M GOING TO OVERRULE THAT OBJECTION.

08:59AM 23   MR. PAK: I APPRECIATE THAT VERY MUCH, YOUR HONOR.

08:59AM 24   THE COURT: OKAY. AND I DO THINK -- IT'S UP TO YOU

08:59AM 25   IF YOU WANT TO SUBMIT ALL OF THESE REGISTRATIONS, IF THAT'S ANY

08:59AM   1   DOUBT ABOUT THE NEED FOR IT.

08:59AM   2   MR. PAK: I THINK WE NEED TO DO THAT.

08:59AM   3   THE COURT: I THINK THAT YOU PROBABLY NEED TO. OKAY.

08:59AM   4   WE'VE USED UP OUR HALF AN HOUR.

08:59AM   5   MR. VAN NEST: WE GOT A PLAN THOUGH, YOUR HONOR.

08:59AM   6   THE COURT: A PLAN IS GOOD.

08:59AM   7   MR. NELSON: WE WORKED SOMETHING OUT.

08:59AM   8   MR. VAN NEST: WHAT WE THOUGHT MADE SENSE WITH OUR

08:59AM   9   JURY HERE OUR WITNESSES HERE ASK ALL OF THAT, THE ONLY OTHER

08:59AM   10   STUFF IS DR. ALMEROTH AND MR. NELSON AND I HAVE AGREED TO TALK

08:59AM   11   FURTHER, AND IT'S NOT CERTAIN THAT WE WILL EVEN GET TO HIM

09:00AM   12   TODAY, BUT IF WE DO, HE'S AGREED TO STAY ON THE STUFF THAT'S

09:00AM   13   NOT OBJECTED TO, EXHIBIT-WISE AND GRAPHICS-WISE, AND WE CAN

09:00AM   14   TAKE IT UP END OF THE DAY TODAY OR TOMORROW, BUT WE WILL TRY TO

09:00AM   15   WORK IT OUT AND NARROW THE DISPUTES FURTHER SO YOU DON'T HAVE

09:00AM   16   MUCH TO DO.

09:00AM   17   THE COURT: OKAY. I APPRECIATE THAT BECAUSE

09:00AM   18   UNFORTUNATELY, MANY -- THE FIRST CATEGORY MOST OF THEM WERE

09:00AM   19   E-MAILS AND I'M ACTUALLY NOT USED TO EXPERTS INTRODUCING

09:00AM   20   DOCUMENTS LIKE THIS.

09:00AM   21   MR. VAN NEST: RIGHT.

09:00AM   22   THE COURT: SO IN A SENSE, IT MAY GO FAST FOR ME IF

09:00AM   23   YOU CAN GIVE ME THE NUMBERS THAT ARE E-MAILS AND MAKE ONE

09:00AM   24   ARGUMENT, WHICH I'M SURE YOU WERE GOING TO DO.

09:00AM   25   MR. VAN NEST: THAT'S WHAT I WAS GOING TO DO. BUT I

09:00AM 1   AGREED TO PUT THIS OFF, AND MR. NELSON AND I ARE GOING TO WORK

09:00AM 2   A LITTLE MORE CLOSELY TO GET THIS WORKED OUT.

09:00AM 3   THE COURT: I DO HAVE ONE JURY OUR STILL MISSING SO

09:00AM 4   WE DON'T HAVE TO WRAP IT UP QUITE YET. WHEN THE JURY OUR IS

09:00AM 5   MISSING I WON'T CHARGE THE TIME TO YOU.

09:00AM 6   MR. VAN NEST: OKAY.

09:00AM 7   THE COURT: I DID -- THESE ARE JUST LITTLE THINGS.

09:00AM 8   THERE WERE A COUPLE OF STRAY EXHIBITS THAT WERE NOT LISTED IN

09:00AM 9   YOUR BRIEF, AND THESE WERE SLIDES 129 AND 136. I DON'T BELIEVE

09:01AM 10   THEY WERE DESIGNATED.

09:01AM 11   YOU GAVE ME EVERYTHING, SO I ACTUALLY HAVE IT IN THE

09:01AM 12   SUBMISSION, BUT THAT ONE WASN'T THERE. AND I THINK SLIDE --

09:01AM 13   MR. VAN NEST: 129 AND 136, YOUR HONOR?

09:01AM 14   THE COURT: YES. IN THE E-MAILS THAT I GOT LATER,

09:01AM 15   YOU WERE REITERATING THAT THAT WAS STILL AT ISSUE, BUT I DIDN'T

09:01AM 16   SEE IT IN THE MOTION. AND IT'S FINE FOR ME TO CONSIDER IT, BUT

09:01AM 17   I JUST DON'T KNOW.

09:01AM 18   MR. VAN NEST: WHAT IT IS, WE WILL SEND IT IN. BUT I

09:01AM 19   DO HAVE THIS --

09:01AM 20   THE COURT: YOU GAVE ME --

09:01AM 21   MR. VAN NEST: IT IS ONE RANDOM, THAT'S RIGHT.

09:01AM 22   THAT'S AN ISSUE AS WELL.

09:01AM 23   THE COURT: OKAY. THAT'S FINE. AND THERE ARE A

09:01AM 24   NUMBER OF SUMMARY DOCUMENTS, THOUGH. AND I DON'T KNOW WHO THEY

09:01AM 25   ARE COMING IN THROUGH. ARE YOU STILL TALKING ABOUT THOSE,

09:01AM 1   MR. NELSON?

09:01AM 2   MR. NELSON: WE ARE TALKING ABOUT THOSE, YOUR HONOR.

09:01AM 3   AND THOSE WILL BE -- IT'S SIMILAR TO THE LAST ISSUE WE

09:01AM 4   TALKED ABOUT, SO WHAT THOSE ARE, ARE A SUMMARY OF THE

09:01AM 5   PROTECTABLE ELEMENTS, MATCHED AGAINST THE CORRESPONDING

09:02AM 6   ELEMENTS.

09:02AM 7   AND WE'RE GOING TO HAVE THE SAME ISSUE, THAT'S WHAT

09:02AM 8   MR. VAN NEST AND I, PART OF THE THINGS WE WERE TALKING ABOUT,

09:02AM 9   SAME ISSUE WITH RESPECT TO DR. BLACK BECAUSE WE DOES THE

09:02AM 10   SUMMARIES ON HERE'S THE WORDS I FOUND. BECAUSE OTHERWISE WHAT

09:02AM 11   WE WOULD END UP DOING IS LITERALLY HAVE TO GO THROUGH EVERY

09:02AM 12   SINGLE ONE.

09:02AM 13   THE COURT: SO YOU KNOW, IT WAS INTERESTING, ON FOR

09:02AM 14   EXAMPLE, 4800, WHICH IS THE MANUALS, YOU'VE LITERALLY SHOWN

09:02AM 15   THEM NEXT TO EACH OTHER.

09:02AM 16   MR. NELSON: CORRECT.

09:02AM 17   THE COURT: AND IT LOOKS LIKE THEY ARE VIRTUALLY

09:02AM 18   SCREEN SHOTS, SO I DON'T KNOW IF THAT'S -- YOU WANT TO

09:02AM 19   INTRODUCE IT AS A SUMMARY, YOU ARE GOING TO BE INTRODUCING THE

09:02AM 20   WORK AS A WHOLE ANY WAY.

09:02AM 21   MR. NELSON: YEAH, WELL THAT'S WHAT WE JUST DID WITH

09:02AM 22   THE OTHER SUMMARY EXHIBIT, THAT'S WHAT WE WERE TALKING ABOUT

09:02AM 23   FROM THOSE. SO THEY WILL BE IN EVIDENCE THAT WAY, BUT

09:02AM 24   OTHERWISE, IF YOU THINK ABOUT THE WAY THIS WOULD ANY WITH BOTH

09:02AM 25   OF THE EXPERTS YOU WOULD HAVE TO GO THROUGH EACH OF THE MANUALS

09:02AM 1   AND SAY, HERE'S WHERE THIS IS SHOWN, HERE'S WHERE THAT'S SHOWN.

09:02AM 2   AND CORRESPONDINGLY, DR. BLACK WITH HIS OPINIONS OF HERE'S

09:03AM 3   WHERE I FOUND THIS, HERE'S WHERE I FOUND THAT, WITH RESPECT TO

09:03AM 4   ALL OF THE UNDERLYING DOCUMENTATION. AND I JUST DON'T THINK

09:03AM 5   EITHER OF US HAVE THE TIME FOR THAT KIND OF THING.

09:03AM 6   THE COURT: THE APPROACH IS A PROPER WAY TO PRESENT

09:03AM 7   IT TO THE JURY. WHETHER THERE ARE OBJECTIONS TO IT OR NOT IS A

09:03AM 8   DIFFERENT ISSUE.

09:03AM 9   MR. VAN NEST: THAT'S RIGHT.

09:03AM 10   THE COURT: SO I HOPE YOU WILL CONTINUE TO TALK ABOUT

09:03AM 11   IT.

09:03AM 12   ONE I ACTUALLY COULDN'T FIGURE OUT OR MAYBE I HAVE JUST

09:03AM 13   NEVER SEEN IT. 4797 WAS ARISTA'S COMMAND USAGE OVER TIME

09:03AM 14   SHOWING PERCENTAGES OF ARISTA PRODUCTS THAT WERE MADE UP OF THE

09:03AM 15   ALLEGEDLY COPIED ELEMENTS.

09:03AM 16   MR. NELSON: CORRECT.

09:03AM 17   THE COURT: THAT, I MEAN, THAT ONE I WAS MORE

09:03AM 18   CONCERNED ABOUT. BUT I WILL HEAR YOUR OBJECTIONS ON THEM, I

09:03AM 19   JUST WANTED TO POINT THAT OUT. THE OTHERS I THOUGHT WERE, THE

09:03AM 20   CONCEPT IS SOUND. AND THEN I JUST NEED TO HEAR WHAT THE

09:03AM 21   SPECIFIC OBJECTIONS ARE.

09:03AM 22   MR. VAN NEST: MY BIGGEST BEEF IS THE ONE YOU

09:03AM 23   IDENTIFIED FIRST, THAT A LOT OF THESE LOOK LIKE OPENING

09:03AM 24   STATEMENT OR CLOSING ARGUMENT SLIDES, THEY ARE JUST E-MAILS AND

09:04AM 25   WITNESS PICTURES.

09:04AM 1   THE COURT: SURE.

09:04AM 2   MR. VAN NEST: THAT'S A HUGE CATEGORY, AND WE WILL

09:04AM 3   TALK ABOUT THOSE.

09:04AM 4   THE SUMMARIES, WHAT I THINK WE WILL BE ABLE TO WORK OUT IS

09:04AM 5   DEMONSTRATIVES THAT ARE EQUIVALENT FOR EACH SIDE ALLOWING THE

09:04AM 6   SAME SCOPE OF TESTIMONY FOR EACH SIDE.

09:04AM 7   I THINK THE FIGHT WE MAY HAVE IS WHAT'S THE ACTUAL EXHIBIT,

09:04AM 8   NO ONE WANTS TO PUT THEIR EXPERT REPORT IN, BUT MAYBE WE CAN

09:04AM 9   WORK SOMETHING OUT WHERE HE GETS AN EXHIBIT AND I GETS AN AND

09:04AM 10   BE AND SOMETHING LIKE THAT.

09:04AM 11   BUT GENERALLY WHAT I'M USED TO IS YOU HAVE THE EXPERT

09:04AM 12   TESTIFY AND HE OR SHE USES DEMONSTRATIVES, BUT THEY DON'T GO TO

09:04AM 13   THE JURY. THEY HAVE THE TESTIMONY.

09:04AM 14   THE COURT: SO YOU KNOW, AND YOU ARE EXACTLY RIGHT,

09:04AM 15   MR. VAN NEST.

09:04AM 16   AND IN A CASE THIS COMPLEX, I WOULD -- I KNOW IT WOULD BE A

09:04AM 17   TREMENDOUS AID TO THE JURY TO HAVE THE SUMMARY DOCUMENTS. IF

09:04AM 18   THEY ARE NOT ADMISSIBLE, THEN THEY ARE NOT GOING IN.

09:04AM 19   AND SO I URGE YOU TO KEEP WORKING TO SEE IF YOU CAN COME UP

09:04AM 20   WITH AN AGREED METHOD OF PUTTING SOMETHING LIKE THIS IN THE

09:04AM 21   HANDS OF THE JURY.

09:05AM 22   AND AS I SAY, WHEN I JUST RULE ON THE EVIDENTIARY

09:05AM 23   OBJECTIONS, I'M JUST GOING TO RULE. BUT THE DEMONSTRATIVE IS

09:05AM 24   GOING TO GO BY VERY QUICKLY.

09:05AM 25   I MEAN, JUST FOR EXAMPLE, MR. LOUGHEED TESTIFIED ABOUT THE

09:05AM 1   MULTIWORD COMMAND LINES THAT HE HIMSELF AUTHORED. WELL, NOBODY

09:05AM 2   COULD WRITE THOSE DOWN, IT WAS JUST A DEMONSTRATIVE AND THEY

09:05AM 3   WERE GONE. I COULDN'T EVEN COUNT THEM. IT DIDN'T OCCUR TO ME

09:05AM 4   TO COUNT THEM.

09:05AM 5   SO YOU KNOW, THAT'S THE KIND OF THING THAT IS VERY

09:05AM 6   IMPORTANT IN THE CASE AND GOES BY IN A HEARTBEAT.

09:05AM 7   SO I'M JUST GOING TO URGE YOU TO FIND A WAY TO AGREE TO

09:05AM 8   WHAT GOES BEFORE THE JURY IN THE JURY ROOM, AND THEN IF THE

09:05AM 9   OBJECTIONS REMAIN I WILL JUST HAVE TO LOOK AT THEM AS YOU POINT

09:05AM 10   OUT WHAT'S WRONG ABOUT THEM.

09:05AM 11   MR. VAN NEST: RIGHT. THAT'S WHAT WE WILL DO.

09:05AM 12   THE COURT: OKAY. I APPRECIATE THAT.

09:05AM 13   MR. VAN NEST: WE WILL FIND A TIME TO DO IT WHERE WE

09:05AM 14   ARE NOT TAKING JURY TIME. BECAUSE AGAIN, I THINK WE MIGHT GET

09:05AM 15   TO DR. ALMEROTH TODAY, BUT MR. NELSON HAS A LOT OF STUFF

09:05AM 16   BACKGROUND AND INTRODUCTION AND TUTORIAL THAT'S NOT OBJECTED

09:06AM 17   TO.

09:06AM 18   THE COURT: OKAY. WELL, YOU HAVE ALL MORNING

09:06AM 19   TOMORROW WHILE I'M DOING MY CIVIL MOTIONS CALENDAR.

09:06AM 20   MR. VAN NEST: WE WILL BE OFF TOMORROW IN THE

09:06AM 21   MORNING?

09:06AM 22   THE COURT: NO. IN THE MORNING.

09:06AM 23   MR. VAN NEST: WE WILL BE BACK IN AT 1:00.

09:06AM 24   THE COURT: CORRECT.

09:06AM 25   AND YOU WILL BE BACK AT 12:30 FOR WHATEVER WE HAVE THAT'S

09:06AM   1   FOR THE DAY.

09:06AM   2   MR. VAN NEST: GOT IT.

09:06AM   3   MR. NELSON: SO JUST ON THE SUMMARY, THE ISSUE HERE

09:06AM   4   JUST FOR SOME GUIDANCE AS WE ARE TALKING.

09:06AM   5   SO IT REALLY IS, WHAT WE ARE TRYING TO DO IS MATCH UP TO

09:06AM   6   SHOW HERE'S WHAT THE COMMAND IS IN THE IOS, HERE'S WHAT THE

09:06AM   7   COMMAND IS, AND IT VERY CLEARLY LAYS OUT WHICH USER INTERFACE

09:06AM   8   IT COMES FROM AND THE DOCUMENTATION WHICH WILL BE IN UNDERLYING

09:06AM   9   EVIDENCE, AND IT DOES THAT FOR EACH OF THE PROTECTABLE ELEMENTS

09:06AM   10   AS WELL AS THE MANUALS.

09:06AM   11   THE COURT: I MEAN, IT WOULD BE NICE TO LET THE JURY

09:06AM   12   KNOW WHERE IT COMES FROM SO THEY COULD GO DOUBLE CHECK YOU IF

09:06AM   13   YOU WANT.

09:06AM   14   MR. NELSON: EXACTLY. AND THAT'S THE POINT OF IT.

09:06AM   15   AND REALLY, WE ARE GOING TO HAVE AND I UNDERSTAND THEIR

09:06AM   16   DEFENSE AND THEY SHOULD BE ENTITLED TO PUT ON A DEFENSE, I'M

09:06AM   17   NOT SUGGESTING THAT THEY SHOULDN'T, BUT DR. BLACK, AND YOU KNOW

09:06AM   18   WE'VE TALKED ABOUT THESE MANY, MANY TIMES, THE SUMMARY CHARTS

09:07AM   19   AND IN FACT THEY WERE SHOWN IN THE OPENING ABOUT HERE'S WHERE

09:07AM   20   THESE THINGS COME FROM, AND I THINK STATES, SHOWS IT FAIRLY

09:07AM   21   CLEARLY.

09:07AM   22   I DON'T THINK IT'S MISLEADING TO SAY, THIS IS FROM AN

09:07AM   23   INDUSTRY STANDARD DOCUMENT, WHAT THOSE UNDERLYING DOCUMENTS ARE

09:07AM   24   AND I BELIEVE THE CHARTS DO THAT.

09:07AM   25   I THINK THEY WILL RUN INTO EXACTLY THE SAME PROBLEM, THE

09:07AM 1   JURY WILL HAVE EXACTLY THE SAME PROBLEM FROM THEIR ARGUMENT

09:07AM 2   WHICH IS, HOW ARE THEY GOING TO KNOW? IF THAT'S JUST A

09:07AM 3   DEMONSTRATIVE, NOBODY CAN WRITE DOWN, AND DR. BLACK, HE'S NOT

09:07AM 4   GOING TO HAVE 14 HOURS, OR HOWEVER YOU WOULD HAVE TO GO TO SAY,

09:07AM 5   HERE'S THIS WORD, THIS IS THE MANUAL I FOUND IT IN, HERE'S THE

09:07AM 6   INTRODUCTION OF THAT MANUAL

09:07AM 7   THE COURT: RIGHT. SO I AM HOPING THAT EACH SIDE

09:07AM 8   WILL FIND ITS OWN SUMMARY TO BE SO IMPORTANT TO THE CASE THAT

09:07AM 9   YOU WILL FIND A WAY TO AGREE TO THIS.

09:07AM 10   AND I ACTUALLY THINK IT MAY BE ESSENTIAL TO BOTH SIDES.

09:07AM 11   AND THEN BECAUSE THIS MAY GET A LITTLE ROUGH ONCE I HAVE TO

09:07AM 12   JUST MECHANICALLY APPLY THE RULES OF EVIDENCE, IT MIGHT GET A

09:08AM 13   LITTLE ROUGH AND THE CONSEQUENCES MAY BE DISADVANTAGEOUS TO

09:08AM 14   BOTH SIDES.

09:08AM 15   SO THIS IS A GOOD -- I APPRECIATE THAT YOU ARE GOING TO

09:08AM 16   TALK ABOUT IT, AND I HAVE EVERY CONFIDENCE YOU CAN WORK THIS

09:08AM 17   OUT.

09:08AM 18   MR. VAN NEST: THANK YOU, YOUR HONOR.

09:08AM 19   MR. NELSON: THANK YOU, YOUR HONOR.

09:08AM 20   THE COURT: OKAY. LET'S SEE IF THERE WAS ANYTHING

09:08AM 21   ELSE THAT WE --

09:08AM 22   MR. NELSON: AND CAN I JUST ASK ONE QUESTION. ON THE

09:08AM 23   E-MAILS JUST FOR SOME GUIDANCE THERE, SO THE E-MAILS AND MOST

09:08AM 24   OF THEM THAT ARE THERE, AND I WILL GO BACK AND LOOK AT THESE

09:08AM 25   THINGS MYSELF AS WELL, THESE ARE DOCUMENTS THAT ARE GOING TO

09:08AM 1   COME INTO EVIDENCE THROUGH OTHER PEOPLE, FOR THE MOST PART,

09:08AM 2   THESE DOCUMENTS, SOME OF THEM WILL BE TODAY THROUGH THE AD

09:08AM 3   VERSE EXAMINATIONS, AND THESE WERE INTENDED TO BE PART OF THE

09:08AM 4   SUMMARY OF THE UNDERLYING EVIDENCE THAT DR. ALMEROTH

09:08AM 5   CONSIDERED.

09:08AM 6   SO I UNDERSTAND THAT YOUR HONOR DOESN'T LIKE TO HAVE AN

09:08AM 7   EXPERT JUST MOVE IN MASS A BUNCH OF E-MAILS THAT'S NOT

09:08AM 8   INTENDED.

09:08AM 9   THE COURT: UNDERSTOOD.

09:09AM 10   SO I THINK THE ISSUE OTHER ISSUE THOUGH IS IT GETS TO BE

09:09AM 11   BORDERING ON VOUCHING FOR THE COMPANY, AND THAT'S WHERE THIS

09:09AM 12   OBJECTION POINTS THAT PROBLEM OUT.

09:09AM 13   AND IT'S A FINE LINE, I CAN'T RULE ON IT IN ADVANCE, JUST

09:09AM 14   KEEPING THE DEMONSTRATIVES OUT OR THE EXHIBITS, I THINK SOME OF

09:09AM 15   THESE WERE EXHIBITS, ACTUALLY, IS SOMETHING THAT, YOU KNOW, IF

09:09AM 16   YOU SHOW IT AS A DEMONSTRATIVE NOW, THAT'S FINE.

09:09AM 17   BUT IF IT'S ACTUALLY THIS EXPERT WHO WILL IMPRESS THE JURY

09:09AM 18   BY QUALIFICATIONS AND THEN GOES ON TO SAY, I READ ALL OF THESE

09:09AM 19   E-MAILS AND THIS PERSUADED ME, REALLY IS BORDERING ON VOUCHING.

09:09AM 20   MR. NELSON: I UNDERSTAND WHAT YOU ARE SAYING,

09:09AM 21   YOUR HONOR.

09:09AM 22   THE -- BUT IT'S DIFFERENT. IT'S OFFERED FOR A DIFFERENT

09:09AM 23   PURPOSE. IT'S NOT FOR HIM TO GO IN AND INTERPRET THESE THINGS,

09:09AM 24   BUT HERE DIRECT EVIDENCE OF COPING IS CERTAINLY RELEVANT TO THE

09:09AM 25   INFRINGEMENT CASE. AND SO MANY OF THOSE ARE SOME OF THE DIRECT

09:09AM 1   EVIDENCE OF COPYING AS WELL AS THE STATEMENTS THAT WERE MADE

09:10AM 2   PUBLICLY CONCERNING WHAT THE WORK IS AND HOW IT COMPARES TO THE

09:10AM 3   COPYRIGHTED USER INTERFACES.

09:10AM 4   THE COURT: SURE.

09:10AM 5   MR. NELSON: SO THAT'S RELEVANT EVIDENCE TO SHOW, TO

09:10AM 6   SUPPORT HIS OPINIONS. IT'S NOT OH, I READ THESE WORDS AND

09:10AM 7   THESE ARE WHAT THESE WORDS MEAN TO ME. HERE'S WHAT WAS SAID

09:10AM 8   AND THIS IS PART OF THE EVIDENCE I CONSIDERED.

09:10AM 9   NOW I CERTAINLY AM GOING TO CUT THESE DOWN ANYWAY, I DON'T

09:10AM 10   HAVE THE TIME TO GO THROUGH ALL THESE THINGS. AND I WILL DO

09:10AM 11   THAT. BUT THAT'S THE PURPOSE OF THESE THINGS.

09:10AM 12   AND SO I DON'T -- AND I WILL LIMIT IT TO ONES THAT ARE

09:10AM 13   GOING TO BE IN EVIDENCE THROUGH OTHER WITNESSES SO WE DON'T RUN

09:10AM 14   INTO THE ISSUE OF THE EXPERT SIMPLY SPONSORING THAT DOCUMENT.

09:10AM 15   THE COURT: RIGHT. AND RIGHT NOW I CAN'T RECALL

09:10AM 16   WHICH ARE DEMONSTRATIVES AND WHICH ARE EXHIBITS BECAUSE I

09:10AM 17   LOOKED AT A LOT OF THINGS.

09:10AM 18   MR. NELSON: I THINK LARGELY THEY OVERLAP.

09:10AM 19   THE COURT: IT SEEMS LIKE I WAS LOOKING AT THE SAME

09:10AM 20   THING OVER AND OVER AGAIN.

09:10AM 21   MR. VAN NEST: DO YOU WANT A SET, I'VE GOT A CLEAN

09:10AM 22   SET, WHAT I DID WAS I PULLED OUT LAST NIGHT ALL THE ONES --

09:11AM 23   THE COURT: THAT ARE AT ISSUE?

09:11AM 24   MR. VAN NEST: THE ONES THEY ALREADY PULLED OUT.

09:11AM 25   THEY TOOK A BUNCH OUT LAST NIGHT. THIS IS THE FULL SET OF HIS

09:11AM 1   EXAM, NOT JUST THE ONES THAT ARE OBJECTED TO. AND YOU HAVE

09:11AM 2   FROM THE E-MAILS THE NUMBERS -- THE ONES WE ARE OBJECTING TO.

09:11AM 3   THE COURT: RIGHT.

09:11AM 4   MR. VAN NEST: BUT AS YOU'VE OBSERVED, ARISTA DECIDED

09:11AM 5   TO EMBRACE IOS CLI. WHEN I FIRST GOT THIS SET I THOUGHT THIS

09:11AM 6   WAS THE CLOSING ARGUMENT. I MEAN, BECAUSE IT LOOKS JUST LIKE

09:11AM 7   MR. NELSON'S OPENING.

09:11AM 8   THE COURT: YEAH.

09:11AM 9   MR. VAN NEST: AND HALF OF THE SLIDES IN HERE, I MEAN

09:11AM 10   HALF THE SLIDES IN HERE ARE JUST LIKE THE ONES I SAW. AND HIS

09:11AM 11   OPENING WAS GREAT, I'M NOT OBJECTING TO THAT, BUT THIS WAS JUST

09:11AM 12   LIKE THAT.

09:11AM 13   SO WHAT I HAVE HERE, THIS HAS THE ACTUAL NUMBERS, THERE'S

09:11AM 14   SKIPPED NUMBERS BECAUSE I PULLED OUT THE ONES THAT THEY'VE WITH

09:11AM 15   WITHDRAWN. IF YOU WANT IT, IT'S THE EASIEST WAY THAT KNOW.

09:11AM 16   THE COURT: I ASKED YOU ON IT GIVE THEM TO ME ON MY

09:11AM 17   IPAD BECAUSE I DON'T ACTUALLY HAVE A COLOR PRINTER AND I CAN'T

09:12AM 18   KEEP PRINTING THIS STUFF OUT, IT'S THOUSAND OF PAGES.

09:12AM 19   MR. NELSON: I HAVE YOUR GUIDANCE AND I UNDERSTAND.

09:12AM 20   AND YOU KNOW I WILL TAKE TO HEART.

09:12AM 21   THE COURT: I KNOW YOU WILL.

09:12AM 22   MR. NELSON: SO WHAT I SUGGEST, I DON'T WANT

09:12AM 23   YOUR HONOR TO DO A BUNCH OF UNNECESSARY WORK BECAUSE I THINK I

09:12AM 24   CAN WORK A LOT OF THESE THINGS OUT WITH MR. VAN NEST.

09:12AM 25   SO I THINK WE SHOULD TALK AND THEN GET TO SOMETHING THAT I

09:12AM 1   THINK IS ACCEPTABLE TO YOU, AND THEN IF THERE ARE A FEW MINOR

09:12AM 2   ISSUES LEFT, AS WELL AS DEALING WITH THIS SUMMARY ISSUE, THEN

09:12AM 3   YOUR HONOR CAN DECIDE, BUT OTHERWISE I THINK THAT IT'S

09:12AM 4   PREMATURE FOR THAT.

09:12AM 5   THE COURT: OKAY. WE ARE GOING TO BRING THE JURY IN.

09:12AM 6   THANK YOU.

09:12AM 7   MR. VAN NEST: THANK YOU, YOUR HONOR.

09:12AM 8   THE COURT: ONE LAST QUICK QUESTION.

09:12AM 9   I HAVE BEGUN TO LOOK AT THE OBJECTIONS ON THE DEPOSITIONS.

09:12AM 10   YOU'VE SENT ME THREE PARTIAL TRANSCRIPTS. AND MANY OF THE

09:12AM 11   OBJECTIONS POSED BY CISCO IS THAT THE COUNTER DESIGNATION WAS

09:12AM 12   NOT TIMELY, NONE OF YOU IS IN CHARGE OF THAT.

09:12AM 13   MR. PAK: WE ACTUALLY HAVE MS. JENKINS WHO IS IN

09:12AM 14   CHARGE OF THAT.

09:12AM 15   THE COURT: MS. JENKINS, GOOD MORNING.

09:12AM 16   I HAVE A VERY QUESTION QUICK QUESTION. I'M NOT GOING TO

09:12AM 17   HAVE YOU ARGUE IT NOW IS, THAT IS THE NATURE OF YOUR OBJECTION?

09:13AM 18   I DON'T KNOW HOW LATE IS WAS.

09:13AM 19   MS. JENKINS: YES. IT WAS ABOUT TWO DAYS AGO FOR

09:13AM 20   THESE. WE DISCLOSED THEM ON SUNDAY.

09:13AM 21   THE COURT: THE TIME PERIOD BETWEEN WHEN IT SHOULD

09:13AM 22   HAVE BEEN DISCLOSED IN YOUR VIEW AND WHEN IT WAS ACTUALLY

09:13AM 23   DISCLOSED.

09:13AM 24   MS. JENKINS: OKAY. WELL, IT SHOULD HAVE BEEN -- WE

09:13AM 25   HAD A SCHEDULE SET OUT, AND I DON'T REMEMBER THE EXACT DATE BUT

09:13AM   1   IT WAS SOMETIME BEFORE WE FILED THE JOINT PRETRIAL STATEMENT,

09:13AM   2   SO IT SHOULD HAVE BEEN DISCLOSED PRIOR TO THAT. AND IT WAS NOT

09:13AM   3   DISCLOSED UNTIL I BELIEVE JUST MONDAY EVENING.

09:13AM   4   THE COURT: OKAY.

09:13AM   5   MS. JENKINS: I CAN GET YOU THE EXACT DATE.

09:13AM   6   THE COURT: AND WE WILL TAKE THAT UP EITHER AT THE

09:13AM   7   END OF TODAY SO YOU CAN GET THAT FOR ME BUT I THINK THAT'S AN

09:13AM   8   IMPORTANT THING FOR ME TO KNOW BECAUSE IT'S -- I'M NOT LIKELY

09:13AM   9   TO GRANT THE OBJECTION ON THAT BASIS BECAUSE I THINK YOU'VE HAD

09:13AM   10 ADEQUATE NOTICE OF IT, AND IT SHOULDN'T HAPPEN, BUT I'M NOT

09:13AM   11 ACTUALLY SEEING ANY PREJUDICE FROM IT.

09:13AM   12   MS. JENKINS: OKAY.

09:13AM   13   THE COURT: AND THAT WAS MOST OF YOUR OBJECTIONS

09:14AM   14 TO -- AND THEN ON -- I SENT SARAH AN E-MAIL ON THE WHEELER

09:14AM   15 DEPOSITION, I DON'T HAVE --

09:14AM   16   MS. JENKINS: I'M SORRY, I RESPONDED TO YOUR E-MAIL

09:14AM   17 BUT NEITHER SIDE HAD OBJECTIONS TO MR. WHEELER, WE WERE JUST

09:14AM   18 PROVIDING THAT TOO.

09:14AM   19   THE COURT: THAT'S EVEN BETTER.

09:14AM   20   MS. JENKINS: WE WILL MAKE THAT CLEARER IN THE FUTURE

09:14AM   21 IF THERE ARE NO OBJECTIONS.

09:14AM   22   THE COURT: OKAY. THEN LET'S BRING OUR JURY IN.

09:14AM   23   (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD IN THE

09:14AM   24 PRESENCE OF THE JURY:)

09:15AM   25   THE COURT: ALL RIGHT. PLEASE BE SEATED.

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:16AM 1   GOOD MORNING, EVERYONE. ALL OF OUR JURORS ARE HERE. WE

09:16AM 2 ARE BACK ON THE RECORD AND ALL OF OUR COUNSEL AND PARTIES ARE

09:16AM 3 PRESENT.

09:16AM 4   ALL RIGHT. YESTERDAY WHEN WE LEFT OFF MR. SILBERT WAS IN

09:16AM 5 HIS CROSS-EXAMINATION OF MR. DUDA; IS THAT CORRECT?

09:16AM 6   MR. SILBERT: YES, YOUR HONOR.

09:16AM 7   THE COURT: AND WE ARE GOING TO PICK UP WHERE WE LEFT

09:16AM 8 OFF.

09:16AM 9   MR. SILBERT: YES, YOUR HONOR.

09:16AM 10   THE COURT: ALL RIGHT.

09:16AM 11   MR. DUDA, I'M GOING TO HAVE YOU COME BACK TO THE WITNESS

09:16AM 12 STAND AND I'M GOING TO HAVE YOU SWORN FOR A NEW COURT DAY.

09:16AM 13

09:16AM 14   **KENNETH DUDA,**

09:16AM 15   BEING CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF,

09:16AM 16 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS

09:16AM 17 FOLLOWS:

09:16AM 18   THE WITNESS: YES.

09:16AM 19   THE CLERK: THANK YOU. PLEASE BE SEATED.

09:16AM 20   MR. SILBERT: MAY I PROCEED, YOUR HONOR? THANK YOU.

09:16AM 21

09:16AM 22   **CROSS-EXAMINATION BY MR. SILBERT**

09:16AM 23

09:16AM 24 Q.   GOOD MORNING, MR. DUDA.

09:16AM 25 A.   GOOD MORNING.

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:16AM   1   Q.   WHEN WE LEFT OFF YESTERDAY WE WERE TALKING ABOUT

09:16AM   2   DESCRIPTIONS OF THE CLI AS INDUSTRY STANDARD.

09:16AM   3   CAN I ASK YOU PLEASE TO LOOK AT EXHIBIT 7876 IN YOUR

09:17AM   4   BINDER, AND JUST TO REMIND YOU SINCE IT'S BEEN SOME TIME,

09:17AM   5   THAT'S THE BINDER THAT SAYS REDIRECT EXHIBITS.

09:17AM   6   DO YOU HAVE THAT IN FRONT OF YOU?

09:17AM   7   A.   I DO.

09:17AM   8   Q.   THIS WAS AN E-MAIL THAT WAS SENT TO SEVERAL RECIPIENTS

09:17AM   9   INCLUDING ONE THAT WAS CALLED CE@ARISTANETWORKS.COM.

09:17AM   10   WERE YOU A MEMBER OF THAT E-MAIL GROUP AT THE TIME THAT

09:17AM   11 E-MAIL WAS SENT?

09:17AM   12 A.   YES, I WAS.

09:17AM   13 Q.   AND DID YOU RECEIVE THIS E-MAIL AND THE ATTACHMENT TO AT

09:17AM   14 THIS TIME ON OR AROUND DECEMBER 17TH OF 2009?

09:17AM   15 A.   YES.

09:17AM   16   MR. SILBERT: YOUR HONOR, I OFFER EXHIBIT 7876.

09:17AM   17   MR. PAK: I DON'T HAVE ANY OBJECTIONS, YOUR HONOR.

09:17AM   18   THE COURT: IT WILL BE ADMITTED.

09:17AM   19   (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 7876, HAVING BEEN

09:17AM   20 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

09:17AM   21 EVIDENCE.)

09:17AM   22   BY MR. SILBERT:

09:17AM   23 Q.   MR. DUDA, I'M GOING TO ASK YOU TO PLEASE LOOK AT THE

09:17AM   24 ATTACHMENT TO THE E-MAIL WHICH BEGINS ON THE FOURTH PAGE OF THE

09:17AM   25 DOCUMENT. DO YOU HAVE THAT IN FRONT OF YOU?

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:18AM 1   A.   YES.

09:18AM 2   Q.   WHAT IS THIS DOCUMENT?

09:18AM 3   A.   THIS DOCUMENT IS A DATA SHEET FOR AN ETHERNET SWITCH FROM A

09:18AM 4   COMPANY CALLED BROCADE.

09:18AM 5   Q.   AND WHAT IS BROCADE?

09:18AM 6   A.   BROCADE IS A COMPANY THAT, IT'S REALLY A UNION OF TWO

09:18AM 7   COMPANIES, BROCADE AND FOUNDRY, MAKES VARIOUS DATA CENTER

09:18AM 8   EQUIPMENT, INCLUDING ETHERNET SWITCHES IN COMPETITION WITH

09:18AM 9   ARISTA AND CISCO.

09:18AM 10   Q.   AND CAN I ASK YOU PLEASE TO TURN TO THE NEXT PAGE OF THE

09:18AM 11   DATA SHEET, AND I WANT TO DRAW YOUR ATTENTION TO THE PARAGRAPH

09:18AM 12   ON THE BOTTOM RIGHT.

09:18AM 13   AND DO YOU SEE THE PARAGRAPH THAT BEGINS WITH THE WORD

09:18AM 14   MOREOVER, THERE?

09:18AM 15   A.   YES.

09:18AM 16   Q.   COULD YOU PLEASE READ THAT LANGUAGE INTO THE RECORD?

09:18AM 17   A.   SURE.

09:18AM 18   "MOREOVER, THE USE OF THE SAME INDUSTRY-STANDARD CLI

09:18AM 19   ELIMINATES THE NEED FOR STAFF RETRAINING. AS A RESULT, THE

09:19AM 20   TURBO IRON 24X ENABLES ORGANIZATIONS TO BETTER LEVERAGE THEIR

09:19AM 21   CURRENT TRAINING TOOLS, DEVICES AND PROCESSES."

09:19AM 22   Q.   COULD YOU PLEASE EXPLAIN WHY THE USE OF WHAT BROCADE CALLS

09:19AM 23   AN INDUSTRY STANDARD CLI ELIMINATES THE NEED FOR STAFF

09:19AM 24   RETRAINING?

09:19AM 25   MR. PAK: YOUR HONOR, I THINK WE ARE STARTING TO

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:19AM   1   VENTURE INTO EXPERT TESTIMONY ABOUT A PRODUCT THAT IS NOT AN

09:19AM   2   ARISTA PRODUCT. AND DEALING WITH THE INDUSTRY STANDARD

09:19AM   3   TERMINOLOGY IS A SUBJECT OF THE MOTION IN LIMINE.

09:19AM   4   THE COURT: SUSTAINED. WHY DON'T YOU RESTATE THE

09:19AM   5   QUESTION.

09:19AM   6   BY MR. SILBERT:

09:19AM   7   Q.   DID YOU PERSONALLY, AT THE TIME YOU WERE MAKING DECISIONS

09:19AM   8   AT ARISTA, WITH RESPECT TO WHAT TYPE OF CLI USED, DID YOU HAVE

09:19AM   9   AN UNDERSTANDING OF HOW THE USE OF WHAT YOU UNDERSTOOD TO BE AN

09:19AM   10   INDUSTRY STANDARD CLI WOULD AFFECT THE STAFF RETRAINING NEEDS

09:19AM   11   OF YOUR CUSTOMERS?

09:19AM   12   MR. PAK: SAME OBJECTION, YOUR HONOR. I THINK --

09:19AM   13   THE COURT: OVERRULED.

09:20AM   14   THE WITNESS: YES.

09:20AM   15   BY MR. SILBERT:

09:20AM   16   Q.   AND WHAT WAS THAT UNDERSTANDING?

09:20AM   17   A.   MY UNDERSTANDING IS THAT WHAT BROCADE IS SAYING HERE IS

09:20AM   18   THAT BECAUSE THE CLI THAT BROCADE PROVIDES TO ITS CUSTOMERS

09:20AM   19   GENERALLY CONFORMS WITH THE INDUSTRY STANDARD SETS OF COMMAND

09:20AM   20   LINE COMMANDS. THE NETWORK ENGINEERS OF THE CUSTOMER WILL BE

09:20AM   21   ABLE TO EASILY USE THAT SWITCH BECAUSE IT WILL BE FAMILIAR TO

09:20AM   22   MANAGE.

09:20AM   23   Q.   AND LOOKING AGAIN AT THIS LANGUAGE THAT THE USE OF THE SAME

09:20AM   24   INDUSTRY STANDARD CLI ELIMINATES THE NEED FOR STAFF RETRAINING,

09:20AM   25   WAS THAT TYPE OF STATEMENT UNUSUAL IN YOUR EXPERIENCE?

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:20AM 1   A.   NO, IT WAS QUITE COMMON.

09:20AM 2   Q.   WERE YOU AWARE OF STATEMENTS LIKE THESE FROM OTHER

09:20AM 3   COMPANIES AT THE TIME THAT YOU MADE THE DECISION AT ARISTA TO

09:20AM 4   SUPPORT AN INDUSTRY STANDARD CLI?

09:20AM 5   A.   YES, I WAS. IT WAS WELL UNDERSTOOD IN OUR INDUSTRY THAT

09:21AM 6   MOST DEVICES SUPPORTED A COLOR COMMAND-LINE INTERFACE.

09:21AM 7   Q.   THANK YOU, MR. DUDA, YOU CAN PUT THAT DOCUMENT ASIDE.

09:21AM 8   WHEN YOU DECIDED TO USE AN INDUSTRY STANDARD CLI, DID YOU

09:21AM 9   THINK THAT THERE WAS ANYTHING WRONG WITH DOING THAT

09:21AM 10   A.   NO, NOT AT ALL. MANY TIMES IN MY CAREER, I'VE SEEN COMMAND

09:21AM 11   LINES FOR MANY DIFFERENT PRODUCTS AND DIFFERENT TYPES OF

09:21AM 12   PRODUCTS ACROSS MANY INDUSTRIES AS ENTIRELY NORMAL FOR THOSE

09:21AM 13   COMMAND LINES TO BE SIMILAR.

09:21AM 14   Q.   DID YOU THINK THAT RECOGNIZING THE SAME COMMANDS IN AN

09:21AM 15   ARISTA SWITCH THAT CISCO SWITCHES RECOGNIZED WAS SOMETHING THAT

09:21AM 16   YOU HAD TO HIDE?

09:21AM 17   A.   NO, OF COURSE NOT. WE WERE VERY OPEN ABOUT IT, AS YOU

09:21AM 18   HEARD IN TESTIMONY YESTERDAY, BECAUSE IT WAS SO NORMAL, BOTH IN

09:21AM 19   OUR INDUSTRY AND ALSO IN OTHER INDUSTRIES.

09:21AM 20   Q.   IF YOU THOUGHT THAT IT WAS WRONG TO RECOGNIZE THE SAME --

09:22AM 21   HAVE AN ARISTA SWITCH RECOGNIZE THE SAME COMMANDS THAT A CISCO

09:22AM 22   SWITCH RECOGNIZES, WOULD YOU HAVE DONE IT?

09:22AM 23   A.   NO, OF COURSE NOT. ONE OF THE FOUNDING VALUES OF OUR

09:22AM 24   COMPANY IS TO DO THE RIGHT THING.

09:22AM 25   Q.   AND IF YOU THOUGHT THAT IT VIOLATED CISCO'S INTELLECTUAL

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:22AM 1   PROPERTY RIGHTS TO HAVE AN ARISTA SWITCH RECOGNIZE THE SAME

09:22AM 2   COMMANDS THAT A CISCO SWITCH RECOGNIZES, WOULD YOU HAVE DONE

09:22AM 3   IT?

09:22AM 4   A.   NO, ABSOLUTELY NOT.

09:22AM 5   Q.   OKAY. YESTERDAY MR. PAK PLAYED SOME DEPOSITION TESTIMONY

09:22AM 6   OF YOU SAYING, I'M NOT QUOTING VERBATIM, THAT YOU THOUGHT THAT

09:22AM 7   ARISTA POSSIBLY HAD A COPYRIGHT IN SOME CLI COMMANDS; DO YOU

09:22AM 8   RECALL THAT?

09:22AM 9   A.   YES, I DO.

09:22AM 10   Q.   AT THE TIME YOU WERE DEPOSED IN THIS CASE, WERE YOU AWARE

09:23AM 11   OF THE NATURE OF THE CISCO'S ALLEGATIONS IN THIS CASE?

09:23AM 12   A.   GENERALLY, YES.

09:23AM 13   Q.   AT THE TIME YOU WERE DEPOSED IN THIS CASE, WERE YOU AWARE

09:23AM 14   OF CISCO'S ALLEGATIONS REGARDING A COPYRIGHT INTEREST IN CLI

09:23AM 15   COMMANDS?

09:23AM 16   A.   YES, I WAS AWARE THAT CISCO WAS ASSERTING COPYRIGHT ON THE

09:23AM 17   CLI COMMANDS THEMSELVES, WHICH WAS QUITE SURPRISING TO ME.

09:23AM 18   Q.   DO YOU HAVE AN UNDERSTANDING AS A LAYPERSON OF WHETHER IF

09:23AM 19   CISCO IS VINDICATED IN ITS CLAIMS IN THIS LAWSUIT, HOW THAT

09:23AM 20   MIGHT AFFECT ANY RIGHTS, COPYRIGHTS ARISTA MIGHT HAVE?

09:23AM 21   MR. PAK: OBJECTION. CALLS FOR A LEGAL CONCLUSION.

09:23AM 22   THE COURT: SUSTAINED.

09:23AM 23   MR. SILBERT: YOUR HONOR, IF I MAY ADDRESS THAT. HE

09:23AM 24   WAS ASKED ABOUT --

09:23AM 25   THE COURT: IF YOU WOULD LIKE TO HAVE A SIDEBAR, YOU

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:23AM   1   CAN.

09:23AM   2   MR. SILBERT: THAT'S OKAY.

09:23AM   3   Q.   CAN YOU EXPLAIN, MR. DUDA, WHY YOU SAID IN DEPOSITION THAT

09:23AM   4   YOU THOUGHT THAT ARISTA POSSIBLY MIGHT HAVE A COPYRIGHT IN CLI

09:24AM   5   COMMANDS?

09:24AM   6   A.   SURE. THE SITUATION WAS THAT CISCO HAD ASSERTED A

09:24AM   7   COPYRIGHT ON CLI COMMANDS AGAINST US. PRIOR TO THAT ASSERTION,

09:24AM   8   I NEVER WOULD HAVE IMAGINED THAT A CLI COMMAND WOULD BE

09:24AM   9   COPYRIGHTED. BUT ONCE THEY'VE ASSERTED IT, THE CASE WAS GOING

09:24AM   10   ON, IT'S POSSIBLE THAT THEY WOULD WIN.

09:24AM   11   IF THEY DO WIN, THEN I COULD ONLY ASSUME THAT ARISTA WOULD

09:24AM   12   HAVE A COPYRIGHT IN THE COMMANDS THAT WE CREATED.

09:24AM   13   Q.   THANK YOU.

09:24AM   14   I WANT TO SWITCH TO A NEW TOPIC. MR. PAK ASKED YOU

09:24AM   15   YESTERDAY ABOUT SOURCE CODE, DIFFERENT COMPANY'S SOURCE CODE IN

09:24AM   16   ARISTA'S SWITCH; DO YOU RECALL THAT?

09:24AM   17   A.   YES.

09:24AM   18   Q.   HOW MUCH ORIGINAL SOURCE CODE DID ARISTA WRITE FOR ITS

09:24AM   19   OPERATING SYSTEM?

09:24AM   20   A.   WE'VE WRITTEN OVER 6 MILLION LINES OF ORIGINAL SOURCE CODE,

09:24AM   21   PERHAPS 100,000 PAGES.

09:25AM   22   Q.   AND HOW MANY SOFTWARE ENGINEERS DOES ARISTA CURRENTLY

09:25AM   23   EMPLOY WHO REPORT TO YOU EITHER DIRECTLY OR INDIRECTLY?

09:25AM   24   A.   WE HAVE APPROXIMATELY 650 SOFTWARE ENGINEERS.

09:25AM   25   Q.   DO ARISTA'S PRODUCTS USE ANY SOURCE CODE WRITTEN BY CISCO?

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:25AM 1   A.   NO, NOT A SINGLE ONE.

09:25AM 2   Q.   NOW MR. PAK ALSO ASKED YOU YESTERDAY ABOUT YOUR EMPLOYMENT

09:25AM 3   AT CISCO; DO YOU RECALL THAT?

09:25AM 4   A.   YES, I DO.

09:25AM 5   Q.   HOW MUCH TIME PASSED BETWEEN THE TIME THAT YOU LEFT CISCO

09:25AM 6   AND THE TIME THAT YOU HELPED TO FOUND ARISTA?

09:25AM 7   A.   I LEFT CISCO IN APRIL 1999 AND WORKED AT ANOTHER COMPANY

09:25AM 8   FOR A LITTLE OVER FIVE YEARS. WE FOUNDED ARISTA IN

09:25AM 9   OCTOBER 2004.

09:26AM 10   Q.   AND THAT OTHER COMPANY THAT YOU WORKED AT FOR A LITTLE OVER

09:26AM 11   FIVE YEARS, WAS THAT THE IN THE NETWORKING FIELD?

09:26AM 12   A.   NO, IT WASN'T. WE WERE CREATING AN ONLINE VIRTUAL

09:26AM 13   EXPERIENCE FOR SOCIALIZING.

09:26AM 14   Q.   NOW, AFTER YOU FOUNDED ARISTA, HOW MUCH TIME PASSED BEFORE

09:26AM 15   ARISTA MADE THE DECISION TO BUILD AN ETHERNET SWITCH?

09:26AM 16   A.   IT WAS A LITTLE MORE THAN ONE YEAR. WE MADE THE DECISION

09:26AM 17   TO START BUILDING ETHERNET SWITCHES IN NOVEMBER 2005.

09:26AM 18   Q.   SO IF YOU COULD PLEASE DO THE MATH FOR ME. HOW MUCH TIME

09:26AM 19   PASSED FROM THE TIME YOU LEFT CISCO UNTIL THE TIME THAT ARISTA

09:26AM 20   DECIDED TO START BUILDING AN ETHERNET SWITCH?

09:26AM 21   A.   AT THE RISK OF DOING THE MATH IN MY HEAD, I BELIEVE IT WAS

09:26AM 22   ABOUT 6 AND 1 HALF YEARS.

09:26AM 23   Q.   THE OPERATING SYSTEMS THAT CISCO IS ASSERTING IN THIS CASE

09:27AM 24   ARE IOS, NX-OS, IOS XR, AND IOS XE. DURING THE TIME THAT YOU

09:27AM 25   WERE AT CISCO, DID YOU WORK ON ANY OF THOSE OPERATING SYSTEMS

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:27AM 1   IN ANY CAPACITY?

09:27AM 2   A.   I HAVE NEVER WORKED ON ANY OF THOSE OPERATING SYSTEMS IN

09:27AM 3   ANY CAPACITY.

09:27AM 4   Q.   OKAY. MR. DUDA, IS THERE A PARTICULAR COMPONENT OF AN

09:27AM 5   OPERATING SYSTEM THAT RECEIVES CLI COMMANDS WHEN THEY ARE

09:27AM 6   ENTERED BY A USER?

09:27AM 7   A.   YES, THE SOFTWARE THAT RECEIVES AND MAKES SENSE OUT OF CLI

09:27AM 8   COMMANDS IS TYPICALLY CALLED THE CLI PARSER.

09:27AM 9   Q.   AND WHO WROTE THE CLI PARSER IN ARISTA'S EOS OPERATING

09:27AM 10   SYSTEM?

09:27AM 11   A.   VARIOUS PEOPLE HAVE WORKED ON IT OVER THE YEARS, BUT I

09:28AM 12   WROTE THE INITIAL VERSION MYSELF.

09:28AM 13   Q.   AND WHEN YOU WROTE THE SOURCE CODE FOR ARISTA'S CLI PARSER,

09:28AM 14   HAD YOU EVER SEEN SOURCE CODE FOR CISCO'S CLI PARSER?

09:28AM 15   A.   NO, I NEVER WORKED ON ANY CLI PARSER AT CISCO, I NEVER

09:28AM 16   CREATED ANY CLI COMMANDS AT CISCO.

09:28AM 17   Q.   WHEN YOU WROTE THE ARISTA CLI PARSER, WAS THAT THE FIRST

09:28AM 18   PARSER YOU HAD EVER WRITTEN?

09:28AM 19   A.   NO, NOT AT ALL. I WROTE MY FIRST PARSER WHEN I WAS ABOUT

09:28AM 20   12 YEARS OLD AND I CONTINUED WRITING PARSERS AT VARIOUS POINTS

09:28AM 21   OF MY CAREER INCLUDING SEVERAL IN COLLEGE AND A FEW YEARS AFTER

09:28AM 22   COLLEGE.

09:28AM 23   Q.   I WANT TO ASK YOU ABOUT A COUPLE OF DIFFERENT DOCUMENTS

09:28AM 24   THAT MR. PAK SHOWED YOU.

09:28AM 25   SO JUST TO BE CLEAR, THESE WILL BE IN THE OTHER BINDER, THE

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:28AM 1   ONE THAT MR. PAK USED WITH YOU.

09:28AM 2   WOULD YOU PLEASE LOOK AT EXHIBIT 182. DO YOU HAVE THAT IN

09:29AM 3   FRONT OF YOU?

09:29AM 4   A.   YES.

09:29AM 5   Q.   THIS IS THE E-MAIL MR. PAK SHOWED YOU FROM MR. REDLEFSEN AT

09:29AM 6   THE TOP SAYING GREAT, I TOTALLY AGREE, THIS IS --

09:29AM 7   ARE WE ABLE TO GET THAT ON THE SCREEN? IT'S IN EVIDENCE.

09:29AM 8   THANK YOU.

09:29AM 9   A.   YES.

09:29AM 10   Q.   DO YOU RECALL THIS E-MAIL OR HAVE YOU HAD A CHANCE TO

09:29AM 11   FAMILIARIZE YOURSELF WITH IT AGAIN?

09:29AM 12   A.   YES, I HAVE.

09:29AM 13   Q.   OKAY. DOES THIS E-MAIL CHAIN CONCERN THE CLI AT ALL?

09:29AM 14   A.   NO. THIS E-MAIL CHAIN HAS NOTHING TO DO WITH THE CLI.

09:29AM 15   Q.   WHAT IS IT TALKING ABOUT?

09:29AM 16   A.   THIS E-MAIL CHAIN RELATES TO THE SYSTEM LOGGING

09:29AM 17   FUNCTIONALITY ON A SWITCH. THE NATURE OF THE SYSLOG MESSAGES

09:29AM 18   THAT THE SWITCH GENERATES.

09:29AM 19   Q.   COULD YOU JUST BRIEFLY EXPLAIN WHAT THAT IS AND HOW IT'S

09:30AM 20   DIFFERENT FROM THE CLI?

09:30AM 21   A.   WELL, THE SWITCH, THE NETWORK SWITCH GENERATES A LOG OF

09:30AM 22   MESSAGES AS IT OPERATES THAT A NETWORK ADMINISTRATOR CAN USE TO

09:30AM 23   UNDERSTAND WHAT DECISIONS THE SWITCH MADE, HOW THE NETWORK

09:30AM 24   CHANGED OVER TIME, AND GENERALLY BUILD A SENSE FOR THE HISTORY

09:30AM 25   OF THE SWITCH'S OPERATION.

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:30AM 1   THE SYSLOG FACILITY IS HOW THAT LOG IS GENERATED. THIS IS

09:30AM 2 A COMPLETELY SEPARATE THING FROM THE COMMAND-LINE INTERFACE.

09:30AM 3   THE COMMAND-LINE INTERFACE IS A SYSTEM BY WHICH A SWITCH

09:30AM 4 WAITS FOR COMMANDS, TYPICALLY FROM A HUMAN OPERATOR, OR AN

09:30AM 5 AUTOMATION SYSTEM. AND THEN PARSES THOSE COMMANDS AND EXECUTES

09:30AM 6 THEM TYPICALLY CHANGING THE BEHAVIOR OF THE SWITCH OR

09:30AM 7 DISPLAYING INFORMATION ABOUT WHAT THE SWITCH IS TO GO AT THAT

09:30AM 8 TIME

09:30AM 9 Q.   TO YOUR KNOWLEDGE, IS THERE ANY ALLEGATION IN THIS CASE

09:30AM 10 REGARDING ALLEGED IMPROPER COPYING OF SYSLOG FACILITIES?

09:31AM 11 A.   NOT AS FAR AS I KNOW.

09:31AM 12 Q.   THANKS. YOU CAN PUT THAT ASIDE.

09:31AM 13   I WOULD LIKE YOU TO NOW LOOK AT EXHIBIT 190, WHICH MR. PAK

09:31AM 14 SHOWED YOU YESTERDAY. THIS IS THE E-MAIL WHERE YOU WROTE AT

09:31AM 15 THE TOP, I WONDER HOW HARD IT WOULD REALLY BE TO REVERSE

09:31AM 16 ENGINEER THE CISCO TRANSLATIONS.

09:31AM 17   DO YOU SEE THAT?

09:31AM 18 A.   YES, I DO.

09:31AM 19 Q.   WERE YOU TALKING ABOUT REVERSE ENGINEERING CLI COMMANDS IN

09:31AM 20 THIS E-MAIL?

09:31AM 21 A.   NO, I WASN'T.

09:31AM 22 Q.   WHAT WERE YOU TALKING ABOUT?

09:31AM 23 A.   THERE'S A PROTOCOL CALLED TACACS PLUS, WHICH IS A PROTOCOL

09:31AM 24 THE SWITCH USES TO CHECK WHETHER A GIVEN ADMINISTRATOR IS

09:31AM 25 AUTHORIZED TO RUN A PARTICULAR COMMAND. AND IN THAT PROTOCOL

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:31AM 1   THERE ARE SOMETIMES TRANSLATIONS WHERE ONE COMMAND IS

09:31AM 2   TRANSLATED TO ANOTHER COMMAND FOR THE PURPOSES OF ASKING IF THE

09:31AM 3   ADMINISTRATOR IS AUTHORIZED. THOSE ARE THE TRANSLATIONS I'M

09:32AM 4   REFERRING TO.

09:32AM 5   Q.   AND WHY WOULD YOU BE TALKING ABOUT REVERSE ENGINEERING

09:32AM 6   CISCO TACACS TRANSLATIONS?

09:32AM 7   A.   WELL, WE WANTED OUR SWITCHES TO INTEROPERATE IN NETWORKS

09:32AM 8   THAT WERE CONFIGURED BY PEOPLE FAMILIAR WITH CISCO SWITCHES.

09:32AM 9   IN THOSE NETWORKS, MANY OF OUR CUSTOMERS HAVE SET UP TACACS

09:32AM 10   PLUS SERVERS THAT EXPECT CERTAIN TRANSLATIONS. BY USING

09:32AM 11   COMPATIBLE TRANSLATIONS OUR SWITCHES WOULD INTEROPERATE

09:32AM 12   PROPERLY WITH THOSE TACACS PLUS SERVERS.

09:32AM 13   Q.   TO YOUR KNOWLEDGE, CAN YOU THINK OF ANY REASON A PERSON

09:32AM 14   WOULD WANT TO REVERSE ENGINEER CLI COMMANDS?

09:32AM 15   A.   I CAN'T IMAGINE WHY YOU WOULD NEED TO REVERSE ENGINEER A

09:32AM 16   CLI COMMANDS WHEN THEY ARE ALL PUBLISHED ON THE WEBSITES OF THE

09:32AM 17   VENDORS WHO SUPPORT THOSE CLI'S.

09:32AM 18   Q.   THANKS. YOU CAN PUT THAT ASIDE.

09:32AM 19   WOULD YOU LOOK, PLEASE, AS EXHIBIT 194. THIS IS THE E-MAIL

09:33AM 20   WHERE IF YOU LOOK DOWN TOWARDS THE BOTTOM OF THE CHAIN THERE,

09:33AM 21   YOU WROTE, IF WE DO THIS WE SHOULD GO ALL THE WAY AND IOS-IFY,

09:33AM 22   THE CLI. AND IT GOES ON FROM THERE.

09:33AM 23   DO YOU RECALL THIS E-MAIL DISCUSSION, MR. DUDA?

09:33AM 24   A.   YES.

09:33AM 25   Q.   WHAT WERE YOU TALKING ABOUT HERE?

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:33AM 1   A.   WHAT I WAS TALKING ABOUT HERE WAS AN OPEN SOURCE TOOL

09:33AM 2   CALLED MTR, WHICH WAS A TOOL FOR ANALYZING PADS IN THE NETWORK.

09:33AM 3   I THOUGHT IT MIGHT BE A NICE FEATURE TO ADD SUPPORT FOR MTR

09:33AM 4   THROUGH OUR SWITCH.

09:33AM 5   AND I WAS SPECIFICALLY TALKING ABOUT IN THE SENTENCE YOU

09:33AM 6   HIGHLIGHTED WAS THAT IF WE ADD SUPPORT FOR THAT TOOL TO OUR

09:33AM 7   SWITCH, IT WOULD BE NICE TO DESIGN A COMMAND FOR THAT TOOL THAT

09:33AM 8   WAS CONSISTENT WITH THE INDUSTRY STANDARD IOS-IFY.

09:33AM 9   Q.   WHAT DID YOU SPECIFICALLY MEAN BY IOS-IFY THE CLI?

09:33AM 10 A.   THE OPEN SOURCE TOOL, AS IT'S USUALLY PACKAGED, PROVIDES A

09:34AM 11 UNIX-STYLE CLI WHICH HAS LOTS OF VERY SHORT SINGLE CHARACTER,

09:34AM 12 TWO-CHARACTER OPTIONS, AND GENERALLY LOOKS QUITE UNLIKE THE

09:34AM 13 INDUSTRY STANDARD SWITCH CLI.

09:34AM 14   SO I THOUGHT WE SHOULD ADD ANOTHER COMMAND TO OUR CLI FOR

09:34AM 15 INVOKING THE TOOL THAT WOULD LOOK MORE LIKE COMMANDS TYPICALLY

09:34AM 16 FOUND ON SWITCHES.

09:34AM 17 Q.   WERE YOU TALKING ABOUT COPYING ANY ACTUAL EXISTING CISCO

09:34AM 18 CLI COMMAND?

09:34AM 19 A.   NO, I WASN'T. AS FAR AS I KNOW CISCO DOESN'T SUPPORT THIS

09:34AM 20 PARTICULAR TOOL.

09:34AM 21 Q.   SO TO YOUR KNOWLEDGE DID CISCO EVEN HAVE A CLI COMMANDS FOR

09:34AM 22 THE FEATURE THAT YOU ARE DESCRIBING HERE?

09:34AM 23 A.   NOT AS FAR AS I KNOW, BUT I'M NOT A HUNDRED PERCENT

09:34AM 24 CERTAIN.

09:34AM 25 Q.   WHO CAME UP WITH THE CLI COMMANDS THAT ARISTA ACTUALLY USED

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09:34AM 1   FOR THIS FEATURE?

09:34AM 2   A.   I DON'T BELIEVE WE'VE EVER ACTUALLY IMPLEMENTED THIS

09:35AM 3   FEATURE.   THIS IS A FEATURE IDEA, NOT SOMETHING AS FAR AS I

09:35AM 4   KNOW THAT WE'VE IMPLEMENTED.

09:35AM 5   Q.   OKAY.   YOU CAN PUT THAT ASIDE.   THANK YOU.

09:35AM 6   AND SWITCHING AGAIN TO A NEW TOPIC.   MR. PAK ASKED YOU

09:35AM 7   YESTERDAY ABOUT REPLICATING COMMAND RESPONSES.

09:35AM 8   DO YOU RECALL THAT?

09:35AM 9   A.   YES, I DO.

09:35AM 10   Q.   FIRST OF ALL, WHAT IS A COMMAND RESPONSE?

09:35AM 11   A.   WHEN YOU TYPE A COMMAND INTO A SWITCH, SOME COMMANDS

09:35AM 12   DISPLAY THE SWITCHES'S STATUS, AND THOSE COMMANDS TYPICALLY

09:35AM 13   ELICIT RESPONSES THAT IS CONSIST OF STATUS INFORMATION.

09:35AM 14   FOR EXAMPLE, A LIST OF NETWORK INTERFACES AND THE NUMBER OF

09:35AM 15   PACKETS TRANSMITTED BY AND RECEIVED ON THOSE INTERFACES.

09:35AM 16   Q.   AND WE'VE HEARD TESTIMONY IN THE CASE ABOUT SHOW COMMANDS,

09:35AM 17   COMMANDS IN THE FORM OF SHOW FOLLOWED BY SOMETHING TO BE SHOWN.

09:35AM 18   HOW, IF AT ALL, DO COMMAND RESPONSES RELATE TO SHOW COMMANDS?

09:35AM 19   A.   TYPICALLY SHOW COMMANDS HAVE -- TYPICALLY SHOW COMMANDS

09:36AM 20   HAVE COMMAND RESPONSES AND OTHER COMMANDS TYPICALLY HAVE NO

09:36AM 21   RESPONSE.

09:36AM 22   Q.   WHERE DOES MOST OF THE UPON INFORMATION DISPLAYED IN A

09:36AM 23   COMMAND RESPONSE COME FROM?

09:36AM 24   A.   MOST OF THE INFORMATION COMES FROM WITHIN THE SWITCH

09:36AM 25   ITSELF.   SO FOR EXAMPLE, IF YOU TYPE SHOW INTERFACES COUNTERS,

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:36AM 1   WHAT COMES OUT FROM THE SWITCH IS A LIST OF ALL THE INTERFACES

09:36AM 2   AND THE ACTUAL COUNTS OF THE NUMBER OF PACKETS TRANSMITTED AND

09:36AM 3   RECEIVED. THOSE ACTUAL NUMBERS WILL DEPEND ON THE OPERATING

09:36AM 4   CONDITIONS OF THAT PARTICULAR SWITCH.

09:36AM 5   Q.   SO DOES MOST OF THE INFORMATION SHOWN IN A COMMAND RESPONSE

09:36AM 6   COME FROM THE PARTICULAR OPERATING SYSTEM THAT MIGHT BE USED,

09:36AM 7   WHETHER IT'S CISCO'S IOS OPERATING SYSTEM OR ARISTA'S EOS

09:36AM 8   OPERATING SYSTEM?

09:36AM 9   A.   YES. MOST OF THE COMMAND RESPONSES ARE GENERATED BY THE

09:36AM 10   OPERATING SYSTEM ITSELF.

09:36AM 11   Q.   SO WHAT DOES IT MEAN TO TALK ABOUT REPLICATING A COMMAND

09:37AM 12   RESPONSE?

09:37AM 13   A.   THERE'S A QUESTION IN A COMMAND SUCH AS SHOW INTERFACES

09:37AM 14   COUNTERS, ABOUT EXACTLY HOW THAT INFORMATION IS FORMATTED.

09:37AM 15   YOU COULD, FOR EXAMPLE, HAVE FOUR COLUMNS OF INFORMATION

09:37AM 16   WITH A TRANSMIT AND RECEIVE PACKET AND BYTE COUNT PER

09:37AM 17   INTERFACE.

09:37AM 18   SO YOU COULD HAVE A LONGER TABLE WITH ONLY TWO COLUMNS OF

09:37AM 19   INFORMATION, SEPARATE SECTIONS TO TRANSMIT AND RECEIVE, FOR

09:37AM 20   EXAMPLE, AND THAT DECISION OF HOW TO LAY OUT THE INFORMATION IS

09:37AM 21   WHAT I MEANT WHEN I REFERRED TO THE FORMATTING OF A COMMAND

09:37AM 22   RESPONSES.

09:37AM 23   Q.   WHY WOULD ARISTA WANT TO REPLICATE THE FORMATTING OF

09:37AM 24   COMMAND RESPONSES FROM CISCO?

09:37AM 25   A.   SOME OF OUR CUSTOMERS TYPE COMMANDS DIRECTLY THEMSELVES AND

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:37AM   1   LOOK AT THE OUTPUT. BUT OTHER CUSTOMERS CREATE PROGRAMS THAT

09:37AM   2   ISSUE COMMANDS TO SWITCHES AND THEN INTERPRET THE RESPONSE THAT

09:37AM   3   THE SWITCH GENERATES.

09:38AM   4   FOR CUSTOMERS WHO HAVE ALREADY WRITTEN PROGRAMS THAT

09:38AM   5   INTERPRET SWITCH COMMAND RESPONSES, IT'S HELPFUL IF OUR SWITCH

09:38AM   6   COMMAND RESPONSE IS SIMILAR TO THE COMMAND RESPONSES OF OTHER

09:38AM   7   SWITCHES IN A NETWORK.

09:38AM   8   Q.   AND WHY IS IT HELPFUL?

09:38AM   9   A.   IT'S HELPFUL BECAUSE THE PROGRAM THAT OUR CUSTOMER ALREADY

09:38AM   10 WROTE TO INTERPRET THAT COMMAND RESPONSES WILL CONTINUE TO

09:38AM   11 FUNCTION WITH OUR SWITCH AND WON'T NEED SIGNIFICANT REVISION

09:38AM   12 WHEN THE CUSTOMER INTRODUCES OUR SWITCHES INTO THEIR NETWORK.

09:38AM   13 Q.   OKAY. MOVING TO A NEW TOPIC AGAIN.

09:38AM   14   COULD YOU PLEASE EXPLAIN, JUST AT A HIGH LEVEL, WHAT IS IT

09:38AM   15 THAT CLI COMMANDS ARE USED FOR?

09:38AM   16 A.   AT A HIGH LEVEL, CLI COMMANDS HAVE THREE PURPOSES.

09:38AM   17   THE FIRST PURPOSE IS TO CONFIGURE THE DEVICE, TO GIVE IT

09:38AM   18 INSTRUCTIONS ABOUT HOW IT SHOULD BEHAVE IN THE FUTURE AS THE

09:38AM   19 NETWORK OPERATES.

09:38AM   20   THE SECOND FUNCTION ARE SHOW COMMANDS THAT DISPLAY THE

09:38AM   21 STATUS OF THE DEVICE, INCLUDING COUNTERS, ROUTES LEARNED IN A

09:38AM   22 NETWORK AND SO ON.

09:38AM   23   AND THE THIRD FUNCTION ARE SO CALLED EXEC COMMANDS THAT

09:39AM   24 TAKE SOME IMMEDIATE ADMINISTRATIVE ACTION, SUCH AS REBOOTING

09:39AM   25 THE SWITCH OR SHUTTING DOWN THE SWITCH, UPGRADING THE SOFTWARE

CROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

09:39AM   1   ON THE SWITCH.

09:39AM   2   Q.   IS THERE ONLY ONE POSSIBLE WAY TO STATE ANY PARTICULAR CLI

09:39AM   3   COMMAND.

09:39AM   4   A.   NO THERE'S USUALLY MORE THAN ONE WAY TO SAY ALMOST

09:39AM   5   ANYTHING.

09:39AM   6   Q.   ARE THE OPTIONS LIMITED?

09:39AM   7   A.   I THINK THE OPTIONS ARE QUITE LIMITED, IF YOU HAVE AN

09:39AM   8   EXISTING STRUCTURE FOR YOUR CLI, YOU WOULD WANT YOUR COMMANDS

09:39AM   9   TO BASICALLY FOLLOW THAT STRUCTURE TO BE CONSISTENT WITH OTHER

09:39AM   10   COMMANDS IN YOUR CLI.

09:39AM   11   FURTHER, THE WORDS IN THE COMMAND THEMSELVES, LARGELY COME

09:39AM   12   FROM INDUSTRY STANDARD DOCUMENTS, WORDS LIKE ROUTE OR IP.

09:39AM   13   THESE ARE INDUSTRY STANDARD TERMS, THERE AREN'T A LOT OF

09:39AM   14   ALTERNATIVES FOR THEM.

09:39AM   15   Q.   HOW MUCH OF THE INDUSTRY STANDARD CLI CONSISTS OF STANDARD

09:40AM   16   NETWORKING TERMINOLOGY?

09:40AM   17   A.   MOST OF THE COMMAND WORDS, MOST OF THE WORDS THAT MAKE UP

09:40AM   18   OUR COMMANDS FROM COME INDUSTRY STANDARD SOURCES.

09:40AM   19   Q.   AND EVEN IF YOU USE THAT INDUSTRY STANDARD TERMINOLOGY,

09:40AM   20   DON'T YOU HAVE CHOICES TO MAKE AS FAR AS HOW YOU STRING THOSE

09:40AM   21   WORDS TOGETHER TO MAKE UP A COMMAND?

09:40AM   22   A.   YOU MAY HAVE SOME CHOICE, BUT AGAIN, IT'S PRETTY LIMITED.

09:40AM   23   NOT TOO MANY WORD ORDERS MAKE A LOT OF SENSE.

09:40AM   24   FOR EXAMPLE, IF YOU HAVE A COMMAND TO SHOW THE IP ROUTES

09:40AM   25   YOU'VE LEARNED ON YOUR SWITCH, YOU COULD DO SHOW IP ROUTE OR

09:40AM   1   SHOW ROUTES IP, THAT DOESN'T QUITE SEEM RIGHT, PUTTING SHOW AT

09:40AM   2   THE END, IT DOESN'T MAKE SENSE. THERE REALLY AREN'T TOO MANY

09:40AM   3   CHOICES.

09:40AM   4   MR. SILBERT: OKAY. THANK YOU, SIR.

09:40AM   5   I HAVE NO FURTHER QUESTIONS.

09:40AM   6   THE COURT: MR. PAK, REDIRECT FOR THIS WITNESS?

09:41AM   7   (OFF-THE-RECORD DISCUSSION.)

09:41AM   8   MR. SILBERT: I'M SORRY. THANK YOU. ONE MORE

09:41AM   9   QUESTION.

09:41AM 10   Q.   WHY DID -- WHY DID ARISTA HAVE CISCO SWITCHES ON ITS

09:41AM 11   PREMISES?

09:41AM 12   A.   IT'S QUITE NORMAL TO HAVE SOME OF YOUR COMPETITOR'S

09:41AM 13   DEVICES. EVERY VENDOR HAS DEVICES FROM THEIR COMPETITORS, YOU

09:41AM 14   USE THEM FOR TESTING, FOR COMPETITIVE EVALUATION AND YOU ALSO

09:41AM 15   USE THEM JUST FOR DAY-TO-DAY OPERATIONS.

09:41AM 16   Q.   OKAY.

09:41AM 17   THANK YOU.

09:41AM 18

09:41AM 19   **REDIRECT EXAMINATION BY MR. PAK**

09:41AM 20

09:41AM 21   BY MR. PAK:

09:41AM 22   Q.   GOOD MORNING, MR. DUDA.

09:42AM 23   A.   GOOD MORNING.

09:42AM 24   Q.   LET'S START WITH SOME OF THE QUESTIONS THAT WERE JUST ASKED

09:42AM 25   THIS MORNING.

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:42AM 1   JUST BECAUSE SOMETHING IS PUBLIC DOESN'T MEAN THAT A

09:42AM 2   COMPANY CAN TAKE IT FROM ANOTHER COMPETITOR'S PRODUCT; ISN'T

09:42AM 3   THAT TRUE?

09:42AM 4   A.   THAT'S CERTAINLY TRUE IN GENERAL.

09:42AM 5   Q.   YOU HAVE LOTS OF FEATURES THAT ARE PUBLIC THAT COULD BE

09:42AM 6   PROTECTED BY PATENTS OR COPYRIGHTS; ISN'T THAT TRUE?

09:42AM 7   A.   I'M NOT SURE HOW TO PROTECT A FEATURE BY A COPYRIGHT.

09:42AM 8   Q.   LET ME ASK IT THIS WAY, ISN'T IT TRUE, SIR, THAT PRODUCTS

09:42AM 9   THAT ARE PUBLIC AND HAVE PUBLIC FEATURES CAN BE PROTECTED BY

09:42AM 10   INTELLECTUAL PROPERTY RIGHTS?

09:42AM 11   A.   YES, I THINK THAT'S TRUE.

09:42AM 12   Q.   ISN'T IT ALWAYS TRUE, SIR, THAT JUST BECAUSE A CUSTOMER

09:42AM 13   ASKS FOR SOMETHING FROM A COMPETITOR'S PRODUCT, DOESN'T MEAN

09:42AM 14   THAT A COMPANY CAN GIVE THE SAME FEATURE TO A CUSTOMER; ISN'T

09:43AM 15   THAT A TRUE STATEMENT?

09:43AM 16   A.   I'M SORRY, I DIDN'T QUITE FOLLOW. COULD YOU REPEAT IT,

09:43AM 17   PLEASE.

09:43AM 18   Q.   JUST BECAUSE A CUSTOMER ASKS FOR A FEATURE FROM A COMPETING

09:43AM 19   PRODUCT, DOESN'T MEAN A COMPANY CAN GIVE THE SAME FEATURE BACK

09:43AM 20   TO THE CUSTOMER; ISN'T THAT TRUE?

09:43AM 21   A.   IN MOST CASES, YOU PROBABLY COULD. THERE MAY BE CASES

09:43AM 22   WHERE YOU COULDN'T.

09:43AM 23   Q.   CASES WHERE THE OTHER COMPANY HAS INTELLECTUAL PROPERTY

09:43AM 24   RIGHTS, CORRECT?

09:43AM 25   A.   THAT SOUNDS LIKE ONE POSSIBILITY.

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:43AM   1   Q.   NOW I WANT TO GO BACK AND JUST ESTABLISH SOME FACTS. I

09:43AM   2   THINK THERE WERE SOME QUESTIONS ABOUT E-MAILS, BUT I THINK IT'S

09:43AM   3   UNDISPUTED NOW THAT ARISTA COPIED CLI COMMANDS FROM CISCO'S

09:43AM   4   SOURCE CODE?

09:43AM   5   A.   THAT'S RIGHT.

09:43AM   6   Q.   WITH RESPECT TO SCREEN OUTPUTS, YOU WOULD AGREE WITH ME,

09:43AM   7   SIR, THAT IF ANY OF CISCO'S SCREEN OUTPUTS CONTAIN EXPRESSIVE

09:44AM   8   WORK, THEN ARISTA CANNOT USE THAT MATERIAL WITHOUT A LICENSE

09:44AM   9   FROM CISCO; ISN'T THAT TRUE?

09:44AM   10   MR. SILBERT: OBJECTION. CALLS FOR A LEGAL

09:44AM   11   CONCLUSION.

09:44AM   12   MR. PAK: THAT'S YOUR BELIEF, RIGHT?

09:44AM   13   THE COURT: SUSTAINED.

09:44AM   14   BY MR. PAK:

09:44AM   15   Q.   YOU TESTIFIED EARLIER THAT YOU HAD CERTAIN BELIEFS ABOUT

09:44AM   16   WHAT YOU CAN DO PROPERLY AND WHAT YOU CANNOT DO PROPERLY WITH

09:44AM   17   RESPECT TO CISCO'S COMMANDS; IS THAT TRUE?

09:44AM   18   A.   I BELIEVE SO.

09:44AM   19   Q.   OKAY. DO YOU BELIEVE ON BEHALF OF ARISTA THAT YOU CAN TAKE

09:44AM   20   ANY OF THE SCREEN OUTPUTS FROM CISCO WITHOUT A LICENSE; IS THAT

09:44AM   21   YOUR TESTIMONY?

09:44AM   22   MR. SILBERT: SAME OBJECTION.

09:44AM   23   THE COURT: SUSTAINED.

09:44AM   24   BY MR. PAK:

09:44AM   25   Q.   DID YOU FORM ANY SUBJECTIVE BELIEFS ON BEHALF OF ARISTA

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:44AM 1   PRIOR TO THIS LAWSUIT ON THE COPYRIGHTABILITY OF SCREEN

09:44AM 2   OUTPUTS?

09:45AM 3   A.   I BELIEVE THAT MOST SCREEN OUTPUTS ARE NOT COPYRIGHTABLE,

09:45AM 4   WE ARE TALKING HERE ABOUT TABLES OF INFORMATION. IT'S

09:45AM 5   CERTAINLY POSSIBLE THAT A SCREEN OUTPUT COULD CONSIST OF A

09:45AM 6   COPYRIGHTABLE WORK. I'M NOT AWARE OF ANY COMMANDS THAT ARE

09:45AM 7   LIKE THAT.

09:45AM 8   THAT'S A HYPOTHETICAL CASE WHERE I CAN IMAGINE SCREEN

09:45AM 9   OUTPUT THAT COULD BE SUBJECT TO COPYRIGHT.

09:45AM 10 Q.   AND IF A SCREEN OUTPUT WAS SUBJECT TO COPYRIGHTABILITY, YOU

09:45AM 11 WOULD NEED A LICENSE FROM CISCO TO USE THAT WORK, CORRECT?

09:45AM 12   MR. SILBERT: SAME OBJECTION.

09:45AM 13   THE COURT: OVERRULED.

09:45AM 14   THE WITNESS: I EXPECT THAT YOU WOULD.

09:45AM 15 BY MR. PAK:

09:45AM 16 Q.   AND SIR BEFORE THIS LAWSUIT, SETTING ASIDE ANY PRIVILEGED

09:45AM 17 COMMUNICATION, YOU PERSONALLY NEVER CONDUCTED AN ANALYSIS OF

09:45AM 18 THE CISCO SCREEN OUTPUTS ON THE QUESTION OF WHETHER IT'S

09:45AM 19 FUNCTIONAL OR EXPRESSIVE; ISN'T THAT TRUE?

09:45AM 20 A.   I DID NOT.

09:45AM 21 Q.   OKAY. AND EVEN AFTER THIS LAWSUIT WAS FILED, ARISTA DID

09:46AM 22 NOT CHANGE ANY OF ITS SCREEN OUTPUTS TO RETAIN ANY OVERLAP OF

09:46AM 23 ITS SCREEN OUTPUTS; IS THAT A TRUE STATEMENT?

09:46AM 24 A.   I'M NOT SURE. I DON'T KNOW.

09:46AM 25 Q.   ARE YOU WEAR OF ANY SUCH CHANGES?

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:46AM 1   A.   NO.

09:46AM 2   Q.   LET'S TALK ABOUT THE LAST QUESTION THAT MR. SILBERT ASKED

09:46AM 3   YOU. YOU TALKED ABOUT HAVING SWITCHES OF OTHER COMPANIES ON

09:46AM 4   YOUR PREMISES, CORRECT?

09:46AM 5   A.   YES.

09:46AM 6   Q.   NOW DO YOU BELIEVE IT'S PROPER FOR A COMPANY TO USE

09:46AM 7   EQUIPMENT OF ANOTHER COMPANY TO COPY FEATURES THAT ARE

09:46AM 8   PROTECTED BY INTELLECTUAL PROPERTY RIGHTS?

09:46AM 9   A.   WELL, I THINK IF THE FEATURE IS PROTECTED BY INTELLECTUAL

09:46AM 10   PROPERTY RIGHTS, YOU ARE GOING TO HAVE LEGAL ISSUES WITH

09:46AM 11   IMPLEMENTING THAT FEATURE AT ALL.

09:46AM 12   Q.   THAT'S RIGHT.

09:46AM 13   AND IT DOESN'T MATTER WHETHER YOU ARE COPYING IT FROM A

09:47AM 14   SWITCH OR PUBLIC SOURCES, IF IT'S PROTECTED, IF THE FEATURE OR

09:47AM 15   EXPRESSION IS PROTECTED BY INTELLECTUAL PROPERTY RIGHTS, ARISTA

09:47AM 16   SHOULD NOT BE MAKING COPIES OF TYPE OF FEATURE OR EXPRESSION,

09:47AM 17   RIGHT?

09:47AM 18   A.   SOUNDS RIGHT.

09:47AM 19   Q.   OKAY. I WANT TO GO BACK TO SOME TESTIMONY YOU GAVE

09:47AM 20   YESTERDAY AND ALSO SOME TESTIMONY YOU GAVE TODAY. I BELIEVE

09:47AM 21   YOU TESTIFIED NOW THAT YOU WERE PERSONALLY INVOLVED IN MAKING A

09:47AM 22   DECISION AT ARISTA TO USE AN INDUSTRY STANDARD CLI; IS THAT

09:47AM 23   CORRECT?

09:47AM 24   A.   THAT'S RIGHT.

09:47AM 25   Q.   AND I BELIEVE YOU TESTIFIED THAT INDUSTRY STANDARD CLI IS A

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:47AM 1   SET OF COMMON COMMANDS AND COMMON EXPECTATIONS FOR HOW COMMANDS

09:47AM 2   WORK THAT APPLY TO A LOT OF DIFFERENT DEVICES; IS THAT YOUR

09:47AM 3   TESTIMONY?

09:47AM 4   A.   YES.

09:47AM 5   Q.   AND YOU ALSO TALKED ABOUT A COMPANY CALLED BNT YESTERDAY;

09:47AM 6   DO YOU RECALL THAT?

09:47AM 7   A.   YES.

09:47AM 8   Q.   BNT IS BLADE NETWORK TECHNOLOGIES, CORRECT?

09:47AM 9   A.   YES.

09:47AM 10   Q.   AND THAT WAS A COMPETITOR OF ARISTA AT THE TIME, RIGHT?

09:48AM 11   A.   YES.

09:48AM 12   Q.   AND WHAT YOU SAID IS IN SOME OF THE DOCUMENTS WE LOOKED AT,

09:48AM 13   THAT BNT HAD ADVERTISED ITS CLI AS IS-CLI; DO YOU RECALL THAT?

09:48AM 14   A.   YES.

09:48AM 15   Q.   AND YOU BELIEVED THAT MEANT INDUSTRY STANDARD CLI, CORRECT?

09:48AM 16   A.   YES.

09:48AM 17   Q.   SO YOU BELIEVED THAT BNT WAS OUT PROMOTING ITS CLI AS AN

09:48AM 18   INDUSTRY STANDARD CLI?

09:48AM 19   A.   YES.

09:48AM 20   Q.   AND THAT WAS ONE OF THE REASONS YOU FELT YOU WERE JUSTIFIED

09:48AM 21   THAT ARISTA COULD COPY CISCO'S COMMAND CLI?

09:48AM 22   A.   WELL, I'M NOT SURE, AT THE TIME WE MADE THE DECISION TO USE

09:48AM 23   THE -- FOLLOW THE INDUSTRY STANDARD CLI, I'M NOT SURE I HAD

09:48AM 24   SEEN THAT PARTICULAR BNT DOCUMENT, I THINK IT CAME AFTER THAT

09:48AM 25   DECISION.

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:48AM 1   Q.   FIRST OF ALL, YOU ARE NOT SURE, SITTING HERE TODAY, WHETHER

09:49AM 2   THE DOCUMENTS THAT MR. SILBERT SHOWED YOU ON BNT WAS CONSIDERED

09:49AM 3   BY YOU BEFORE MAKING THE DECISION TO COPY CISCO CLI COMMANDS,

09:49AM 4   CORRECT?

09:49AM 5   A.   THAT'S RIGHT.

09:49AM 6   Q.   ALL RIGHT.

09:49AM 7   NEVERTHELESS, YOU TALKED ABOUT BNT HAVING AN INDUSTRY

09:49AM 8   STANDARD OR IS-CLI AS ONE OF THE THINGS THAT SUPPORTED YOUR

09:49AM 9   VIEW THAT THERE IS AN INDUSTRY STANDARD CLI THAT YOU CAN USE

09:49AM 10   FREELY; THAT WAS YOUR TESTIMONY, CORRECT?

09:49AM 11   A.   YES.

09:49AM 12   Q.   WELL, ISN'T IT TRUE, SIR, THAT BNT ACTUALLY DOESN'T USE THE

09:49AM 13   CISCO CLI?

09:49AM 14   A.   MY UNDERSTANDING IS THE IS-CLI IS QUITE CISCO-LIKE.

09:49AM 15   Q.   HAVE YOU EVER INVESTIGATED THE BNT CLI?

09:49AM 16   A.   NOT IN DETAIL.

09:49AM 17   Q.   YOU NEVER HAVE DONE THAT ANALYSIS?

09:49AM 18   A.   NO, I HAVEN'T.

09:49AM 19   Q.   DO YOU HAVE ANY IDEA HOW MUCH OVERLAP THERE EXISTS IN BNT

09:50AM 20   COMPARED TO THE CISCO CLI?

09:50AM 21   A.   I DON'T KNOW BUT I PRESUME WHEN THEY CALL THEIR CLI

09:50AM 22   CISCO-LIKE, THAT'S BECAUSE THERE'S SOME OVER LAP.

09:50AM 23   Q.   ISN'T IT TRUE THAT ARISTA CRITICIZED BNT AS A COMPETITOR

09:50AM 24   BECAUSE THEIR CLI WAS A MIX OF NORTEL, CATOS, AND IOS COMMANDS?

09:50AM 25   A.   I DON'T KNOW.

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:50AM 1   Q.   OKAY. LET ME SHOW YOU A DOCUMENT, AND THIS IS IN YOUR

09:50AM 2   REBUTTAL OR REDIRECT EXHIBIT. AND TAKE A LOOK AT EXHIBIT 197.

09:50AM 3   MR. DUDA, THIS IS AN E-MAIL YOU SENT ON JULY 21ST, 2009, TO

09:50AM 4   MR. ANSHUL SADANA, CORRECT?

09:50AM 5   A.   YES.

09:50AM 6   MR. PAK: YOUR HONOR, I WOULD LIKE TO ADMIT INTO

09:50AM 7   EVIDENCE, EXHIBIT 197.

09:50AM 8   MR. SILBERT: NO OBJECTION.

09:50AM 9   THE COURT: IT WILL BE ADMITTED.

09:50AM 10   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 197, HAVING BEEN

09:50AM 11   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

09:51AM 12   EVIDENCE.)

09:51AM 13   BY MR. PAK:

09:51AM 14   Q.   YOU WROTE, "I WANTED TO EXPAND ON ONE ASPECT OF ANSHUL'S

09:51AM 15   COMMENTS. ANSHUL IS EXACTLY RIGHT THAT WE HAVE DECIDED TO

09:51AM 16   EMBRACE THE IOS CLI AND MUST BE CONSISTENT WITH THAT. THAT

09:51AM 17   MEANS WE MUST SUPPORT CISCO-STYLE ACL'S NO MATTER HOW MUCH WE

09:51AM 18   DON'T LIKE THEM. CUSTOMERS CLEARLY APPRECIATE OUR RIGOR IN

09:51AM 19   STICKING WITH THE INDUSTRY STANDARD HERE."

09:51AM 20   DO YOU SEE THAT?

09:51AM 21   A.   YES.

09:51AM 22   Q.   AND NOW LET'S SEE WHAT YOU SAID OR WHAT MR. SADANA SAID

09:51AM 23   WITH RESPECT TO BNT.

09:51AM 24   AND IF YOU COULD TURN, MR. FISHER, TO THE NEXT PAGE. AT

09:51AM 25   THE VERY TOP, IF YOU COULD BLOW THAT UP.

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:51AM   1   AND JUST AGAIN, THIS IS EXHIBIT 197. PAGE 2. THIS IS

09:52AM   2   MR. SADANA WHO IS THE VP OF CUSTOMER ENGINEERING AT THE TIME,

09:52AM   3   CORRECT?

09:52AM   4   A.   I'M NOT SURE WHAT HIS TITLE WAS AT THE TIME.

09:52AM   5   Q.   WAS HE A VICE PRESIDENT?

09:52AM   6   A.   I'M SORRY, I JUST DON'T KNOW.

09:52AM   7   Q.   HE'S THE CHIEF CUSTOMER OFFICER TODAY, RIGHT?

09:52AM   8   A.   YES.

09:52AM   9   Q.   MR. SADANA WRITES, REMEMBER THAT ONE OF OUR SELLING POINTS

09:52AM 10   AGAINST BNT IS THAT THEIR CLI IS A MIX OF NORTEL, CATOS, AND

09:52AM 11   IOS. AND THAT MATTERS TO CUSTOMERS. WE CAN'T GO DOWN THE SAME

09:52AM 12   PATH OURSELVES.

09:52AM 13   ARE YOU DISPUTING THOSE STATEMENTS?

09:52AM 14   A.   WELL, I'M NOT SURE.

09:52AM 15   MY UNDERSTANDING IS THAT BNT HAD MORE THAN ONE CLI. THEY

09:52AM 16   STARTED OFF WITH, I THINK THIS MISHMASH, THEN THEY CREATED THE

09:52AM 17   IOS CLI AS A WAY TO CLEAN THAT UP. I'M NOT SURE ABOUT THAT,

09:52AM 18   THAT'S JUST AN IMPRESSION THAT I HAVE.

09:52AM 19   Q.   MR. DUDA, YOU DON'T KNOW THE PERSONAL FACTS BEHIND HOW BNT

09:53AM 20   EVOLVED THEIR CLI, DO YOU?

09:53AM 21   A.   NO.

09:53AM 22   Q.   YOU DON'T HAVE ANY UNDERSTANDING OF THE COMMAND OVER LAP

09:53AM 23   BETWEEN BNT CLI AND CISCO CLI, CORRECT?

09:53AM 24   A.   NOT SPECIFICALLY.

09:53AM 25   Q.   LET'S TALK ABOUT ANOTHER ASPECT OF YOUR TESTIMONY RELATED

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:53AM   1   TO THIS TOPIC. YOU TESTIFIED THAT YOU WERE USING CISCO CLI

09:53AM   2   COMMANDS BECAUSE YOU THOUGHT IT WAS INDUSTRY STANDARD CLI,

09:53AM   3   CORRECT?

09:53AM   4   A.   YES.

09:53AM   5   Q.   BUT WHAT YOU TOLD ARISTA'S CUSTOMERS WHEN YOU WERE

09:53AM   6   COMPETING FOR CISCO'S BUSINESS, IS THAT ARISTA'S CLI IS EXACTLY

09:53AM   7   LIKE CISCO CLI.

09:53AM   8   THAT'S THE WORDS YOU USED, RIGHT?

09:53AM   9   A.   THAT WOULD BE SURPRISING BECAUSE OUR CLI IS NOT EXACTLY

09:53AM 10   LIKE CISCO'S.

09:53AM 11   Q.   THAT'S SURPRISING TO YOU?

09:53AM 12   A.   YES.

09:53AM 13   Q.   OKAY. WHY DON'T YOU TURN TO EXHIBIT 185 IN YOUR BINDER.

09:54AM 14   AND THIS IS AN E-MAIL YOU WROTE AUGUST 12, 2010, TO MR. AARON

09:54AM 15   BAWCOM; DO YOU SEE THAT?

09:54AM 16   A.   YES.

09:54AM 17   Q.   AND THIS WAS SENT ON AUGUST 12, 2010. DO YOU HAVE ANY

09:54AM 18   REASON TO DISPUTE THE AUTHENTICITY OF THIS E-MAIL?

09:54AM 19   A.   NO.

09:54AM 20   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE

09:54AM 21   EXHIBIT 185 INTO EVIDENCE.

09:54AM 22   MR. SILBERT: NO OBJECTION.

09:54AM 23   THE COURT: IT WILL BE ADMITTED.

09:54AM 24   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 185, HAVING BEEN

09:54AM 25   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:54AM 1   EVIDENCE.)

09:54AM 2   BY MR. PAK:

09:54AM 3   Q.   LET'S BLOW THAT UP, AGAIN THIS IS EXHIBIT 185, PAGE 1.

09:54AM 4   FIRST OF ALL, REFLEX SYSTEMS HERE, THAT WAS ONE OF YOUR EARLY

09:54AM 5   POTENTIAL CUSTOMERS?

09:54AM 6   A.   I PRESUME, I DON'T RECALL SPECIFICALLY.

09:55AM 7   Q.   SO LET'S TAKE A LOOK AT WHAT MR. AARON BAWCOM SAID THERE AT

09:55AM 8   THE MIDDLE.

09:55AM 9   ON AUGUST 12, 2010, HE WRITES TO YOU AND HE SAYS, "DO YOU

09:55AM 10   GUYS HAVE A CLI GUIDE? EARLY IN OUR CONVERSATIONS YOU STATED

09:55AM 11   THAT THE ARISTA CLI IS ALMOST EXACTLY LIKE THE CISCO CLI, SO

09:55AM 12   WE'VE BEEN MAKING A FAIR AMOUNT OF PROGRESS BY TAKING THE NEXUS

09:55AM 13   5000/7000 CLI GUIDES, AND EXTRACTING THE SETTINGS OBJECTS FROM

09:55AM 14   THAT. FOR EXPEDIENCY, WE ARE GOING STRAIGHT FROM THE DOCUMENT

09:55AM 15   TO CODE TO TRY AND MEET THE TIMELINE."

09:55AM 16   AND THEN HE SAYS, "IF YOU KNOW OF MAJOR VARIANCES FROM

09:55AM 17   THOSE CLI'S, PLEASE LET ME KNOW."

09:55AM 18   DO YOU SEE THAT?

09:55AM 19   A.   YES.

09:55AM 20   Q.   NEXUS 5,000, 7,000, THOSE ARE CISCO'S SWITCHES, RIGHT?

09:56AM 21   A.   THAT'S CORRECT.

09:56AM 22   Q.   AND WHEN HE SAYS VARIANCES, ARE HE'S ASKING YOU ARE THERE,

09:56AM 23   ANY MAJOR DIFFERENCES BETWEEN THE CLI'S THAT ARE USED BY CISCO

09:56AM 24   FOR THOSE COMPETING PRODUCTS COMPARED TO ARISTA'S CLI, CORRECT?

09:56AM 25   A.   I THINK THAT'S RIGHT.

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:56AM 1   Q.   OKAY. LET'S SEE WHAT YOU SAID. AT THE VERY TOP.

09:56AM 2   YOU WROTE, ON AUGUST 12, 2012, THERE AREN'T TOO MANY MAJOR

09:56AM 3   DEVIATIONS. WE CHANGED THE FLOW CONTROL AUTO NEGOTIATION

09:56AM 4   CONFIGURATION CLI BECAUSE CISCO'S IS SO RIDICULOUS. THERE ARE

09:56AM 5   A FEW OTHER THINGS LIKE THAT. HOWEVER, OUR OBJECTIVE IS THAT

09:56AM 6   ANYONE DOING THE SORTS OF THINGS YOU WOULD BE DOING COULD WRITE

09:56AM 7   ONCE AND HAVE THE SAME CODE WORK AGAINST BOTH CISCO AND US. SO

09:56AM 8   I WOULD SAY THAT USING THE CISCO DOCS IS GREAT, AND IF THERE'S

09:56AM 9   A DEVIATION THAT BOTHERS YOU, LET ME KNOW AND I WILL TRY TO GET

09:56AM 10   IT FIXED.

09:56AM 11   THOSE WERE YOUR WORDS, SIR?

09:57AM 12   A.   SURE. HERE ARE THINGS THAT ARE DIFFERENT, IS WHAT I'M

09:57AM 13   SAYING. AND FOR THE THINGS HE'S DOING, I'M HOPING THE SAME

09:57AM 14   CODE WILL WORK DESPITE THE DIFFERENCES.

09:57AM 15   Q.   SO WHAT YOU TOLD MR. BAWCOM WAS THAT ARISTA'S CLI IS ALMOST

09:57AM 16   EXACTLY LIKE CISCO CLI AND IF THERE ARE ANY MAJOR DEVIATIONS

09:57AM 17   FROM CISCO CLI, YOU ARE GOING TO FIX IT AND YOU ARE GOING TO

09:57AM 18   GET RID OF THOSE DEVIATIONS; THAT'S WHAT YOU TOLD HIM?

09:57AM 19   A.   THAT'S NOT WHAT I SAID.

09:57AM 20   I SPECIFICALLY SAID THERE ARE DEVIATIONS, I GAVE AN EXAMPLE

09:57AM 21   AND I FURTHER SAID THAT IF THERE IS A DEVIATION THAT BOTHERS

09:57AM 22   HIM FOR THE KINDS OF THINGS HE'S TRYING TO DO, I WILL LOOK AT

09:57AM 23   GETTING IT FIXED.

09:57AM 24   Q.   LET ME MAKE SURE WE HAVE THE RECORD ABSOLUTELY CLEAR. YOU

09:57AM 25   ARE DENYING SIR, THAT YOU TOLD MR. BAWCOM THAT ARISTA CLI IS

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:57AM 1   ALMOST EXACTLY LIKE THE CISCO CLI; ARE YOU DENYING THAT?

09:57AM 2   A.   YES.

09:57AM 3   Q.   OKAY. ARE YOU DENYING THAT YOU TOLD MR. BAWCOM THAT THERE

09:57AM 4   ARE NOT TOO MANY DEVIATIONS FROM THE CISCO CLI?

09:57AM 5   A.   I'M NOT DENYING THAT.

09:58AM 6   Q.   YOU WROTE THIS E-MAIL BEFORE THIS LAWSUIT, CORRECT?

09:58AM 7   A.   YES.

09:58AM 8   Q.   AND BEFORE YOUR TESTIMONY HERE TODAY YOU MET WITH LAWYERS

09:58AM 9   REPRESENTING ARISTA, CORRECT?

09:58AM 10   A.   YES.

09:58AM 11   Q.   TO PREPARE FOR YOUR TESTIMONY, CORRECT?

09:58AM 12   A.   CORRECT.

09:58AM 13   Q.   ARE YOU ON AN E-MAIL LIST CALLED CURIOUS?

09:58AM 14   A.   YES.

09:58AM 15   Q.   OKAY. WHAT IS THE CURIOUS E-MAIL LIST?

09:58AM 16   A.   IT'S A LIST THAT CONTAINS MISCELLANEOUS SUBJECTS.

09:58AM 17   Q.   OKAY. AND HOW MANY PEOPLE ARE ON THAT CURIOUS E-MAIL LIST?

09:58AM 18   A.   I DON'T KNOW.

09:58AM 19   Q.   A LOT OF PEOPLE IN THE COMPANY?

09:58AM 20   A.   I'M SORRY, I JUST DON'T KNOW.

09:58AM 21   Q.   BUT YOU ARE PERSONALLY ON THAT LIST, CORRECT?

09:58AM 22   A.   YES.

09:58AM 23   Q.   AND ISN'T IT TRUE, SIR, THAT WITHIN ARISTA, ENGINEERS

09:58AM 24   ACTUALLY USE THE PHRASE INDUSTRY STANDARD TO MEAN WHATEVER

09:58AM 25   CISCO DID?

REDIRECT EXAMINATION OF MR. DUDA BY MR. PAK

09:58AM 1   A.   I DON'T THINK THAT'S NORMAL. SOMETIMES THE PHRASE INDUSTRY

09:59AM 2   STANDARD AND THE PHRASE IOS-LIKE MAY MEAN MORE OR LESS THE SAME

09:59AM 3   THING DEPENDING ON CONTEXT.

09:59AM 4   Q.   BUT ISN'T IT TRUE THAT ENGINEERS WITHIN ARISTA USED THE

09:59AM 5   PHRASE INDUSTRY STANDARD TO REFER TO WHATEVER CISCO DID, ISN'T

09:59AM 6   THAT A TRUE STATEMENT?

09:59AM 7   A.   IT MAY HAVE HAPPENED FROM TIME TO TIME, BUT I DON'T THINK

09:59AM 8   THAT'S NORMAL.

09:59AM 9   Q.   OKAY. LET'S TAKE A LOOK, IF YOU LOOK AT EXHIBIT 528.

09:59AM 10   THIS IS AN E-MAIL SENT OUT FEBRUARY 20, 2014, AND IT WAS

09:59AM 11   SENT OUT MY ABOUT MR. SIGOURE, AND IT WAS SENT TO A NUMBER OF

09:59AM 12   FOLKS INCLUDING THE CURIOUS E-MAIL LIST; DO YOU SEE THAT?

09:59AM 13   A.   YES.

09:59AM 14   Q.   OKAY. DO YOU HAVE ANY REASON TO DISPUTE THE AUTHENTICITY

09:59AM 15   OF THIS E-MAIL?

09:59AM 16   A.   NO.

09:59AM 17   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE

10:00AM 18   EXHIBIT 528 INTO EVIDENCE.

10:00AM 19   MR. SILBERT: NO OBJECTION.

10:00AM 20   THE COURT: IT WILL BE ADMITTED.

10:00AM 21   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 528, HAVING BEEN

10:00AM 22   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

10:00AM 23   EVIDENCE.)

10:00AM 24   BY MR. PAK:

10:00AM 25   Q.   AND MR. SIGOURE, WHAT'S HIS ROLE IN THE COMPANY?

RECROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

10:00AM 1   A.   HE'S A SOFTWARE ENGINEER.

10:00AM 2   Q.   OKAY. HE'S ALSO APPARENTLY A NUMBER OF THE YAK SHAVING

10:00AM 3   STAFF; WHAT DOES THAT MEAN?

10:00AM 4   A.   I DON'T KNOW.

10:00AM 5   Q.   SO WOULD YOU LOOK AT THE THIRD PARAGRAPH HERE.

10:00AM 6   ONE OF THE ARISTA SOFTWARE ENGINEERS WROTE, AS LATE AS

10:00AM 7   FEBRUARY 2014 IS: JUNIPER'S JUNOS IS DIFFERENT ENOUGH FROM

10:00AM 8   "INDUSTRY STANDARD", MEANING WHATEVER CISCO DID, THAT THEY SEE

10:00AM 9   MORE STICKINESS THAN AVERAGE BECAUSE MIGRATING FROM JUNIPER

10:01AM 10   PRODUCTS TO CISCO-LIKE PRODUCTS REQUIRES MORE MOMENTUM THAN

10:01AM 11   MIGRATING FROM CISCO TO ARISTA.

10:01AM 12   THAT WAS WHAT ONE OF YOUR SOFTWARE ENGINEERS WROTE TO THE

10:01AM 13   CURIOUS E-MAIL LIST, CORRECT?

10:01AM 14   A.   THAT'S RIGHT.

10:01AM 15   MR. PAK: THAT'S ALL I HAVE FOR YOU TODAY.

10:01AM 16   THANK YOU.

10:01AM 17   THE COURT: MR. SILBERT, ANYTHING ELSE FOR THIS

10:01AM 18   WITNESS?

10:01AM 19   MR. SILBERT: JUST VERY BRIEFLY, YOUR HONOR.

10:01AM 20   THE COURT: OKAY.

10:01AM 21

10:01AM 22   **RECROSS-EXAMINATION BY MR. SILBERT**

10:01AM 23

10:01AM 24   Q.   MR. DUDA, MR. PAK JUST ASKED YOU ABOUT WHETHER YOU HAD SEEN

10:01AM 25   THE PARTICULAR BNT BROCHURE THAT WE LOOKED AT EARLIER, I

RECROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

10:01AM 1   BELIEVE IT WAS YESTERDAY, BEFORE YOU MADE THE DECISION ABOUT

10:01AM 2   WHAT KIND OF CLI TO USE AT ARISTA; DO YOU RECALL THAT?

10:01AM 3   A.   YES.

10:01AM 4   Q.   WHETHER OR NOT YOU HAD SEEN THAT PARTICULAR BROCHURE, HAD

10:01AM 5   YOU SEEN THE TYPE OF STATEMENT MADE IN THAT BROCHURE BEFORE YOU

10:02AM 6   MADE THE DECISION TO FOLLOW AN INDUSTRY STANDARD CLI?

10:02AM 7   A.   ABSOLUTELY. THAT TYPE OF STATEMENT WAS COMMON IN OUR

10:02AM 8   INDUSTRY.

10:02AM 9   Q.   OKAY. WOULD YOU PLEASE LOOK AT EXHIBIT 197 THAT MR. PAK

10:02AM 10   JUST SHOWED YOU.

10:02AM 11   A.   YES.

10:02AM 12   Q.   THIS IS THE ONE THAT SAYS, IF YOU LOOK ON THE SECOND PAGE

10:02AM 13   AT THE TOP, THIS IS THE LANGUAGE HE JUST SHOWED YOU WRITTEN BY

10:02AM 14   MR. SADANA THAT SAYS, REMEMBER THAT ONE OF OUR SELLING POINTS

10:02AM 15   AGAINST BNT IS THAT THEIR CLI IS A MIX OF NORTEL, CATOS, AND

10:02AM 16   IOS. DO YOU SEE THAT?

10:02AM 17   A.   YES.

10:02AM 18   Q.   OF THOSE THREE ELEMENTS, THAT MR. SADANA SAID HERE BNT IS A

10:03AM 19   MIX OF, NORTEL, CATOS AND IOS, WHICH OF THOSE, IF ANY, ARE

10:03AM 20   CISCO CLI'S?

10:03AM 21   A.   CATOS AND IOS ARE FROM CISCO.

10:03AM 22   Q.   OKAY. SO WHAT DID YOU UNDERSTAND MR. SADANA TO BE SAYING

10:03AM 23   HERE WITH REGARD TO WHAT THE ISSUE WAS WITH BNT CLI THAT WAS A

10:03AM 24   SELLING POINT?

10:03AM 25   A.   MY UNDERSTANDING THAT WAS MR. SADANA WAS SAYING THAT IF YOU

RECROSS-EXAMINATION OF MR. DUDA BY MR. SILBERT

10:03AM 1   CREATE A CLI, WHICH IS A MISHMASH OF INCONSISTENT AND DIVERGENT

10:03AM 2   APPROACHES, CUSTOMERS FIND THAT FRUSTRATING AND WE SHOULD

10:03AM 3   STRIFE TO BE CONSISTENT IN OUR APPROACH TO THE CLI.

10:03AM 4   Q.   DID YOU UNDERSTAND HIM TO BE SAYING THAT SOMEHOW THE BNT

10:03AM 5   DID NOT USE COMMANDS FROM CISCO?

10:04AM 6   A.   NO, OF COURSE NOT.   WHAT MR. SADANA IS SAYING HERE IS THAT

10:04AM 7   BNT DID USE COMMANDS FROM CISCO, TWO OUT OF THE THREE OPERATING

10:04AM 8   SYSTEMS NAMED ARE CISCO OPERATING SYSTEMS.

10:04AM 9   MR. SILBERT: OKAY. THANK YOU.

10:04AM 10   NOTHING FURTHER.

10:04AM 11   THE COURT: THANK YOU.

10:04AM 12   MR. PAK, ANYTHING ELSE? ALL RIGHT.

10:04AM 13   MR. DUDA, THANK YOU FOR YOUR TESTIMONY. YOU ARE FREE TO

10:04AM 14   GO.

10:04AM 15   THE WITNESS: THANK YOU.

10:04AM 16   THE COURT: MR. NELSON, YOUR NEXT WITNESS?

10:04AM 17   MR. NELSON: YES, THANK YOU, YOUR HONOR.

10:04AM 18   AT THIS POINT WE ARE GOING TO CALL MR. ANSHUL SADANA TO THE

10:04AM 19   STAND.

10:04AM 20   THE COURT: MR. SADANA, IF YOU WOULD COME FORWARD TO

10:04AM 21   THE WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

10:04AM 22

10:04AM 23   **ANSHUL SADANA,**

10:04AM 24   BEING CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF,

10:04AM 25   HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:05AM 1   FOLLOWS:

10:05AM 2   THE WITNESS: YES.

10:05AM 3   THE CLERK: THANK YOU. PLEASE BE SEATED.

10:05AM 4   IF YOU WOULD PLEASE STATE YOUR NAME AND SPELL YOUR LAST

10:05AM 5   NAME FOR THE RECORD.

10:05AM 6   THE WITNESS: ANSHUL SADANA. LAST NAME S-A-D-A-N-A.

10:05AM 7   MR. NELSON: YOUR HONOR, MAY I APPROACH?

10:05AM 8   THE COURT: YES.

10:05AM 9   MR. NELSON: THANK YOU, YOUR HONOR.

10:05AM 10

10:05AM 11   **DIRECT EXAMINATION BY MR. NELSON**

10:05AM 12

10:05AM 13   BY MR. NELSON:

10:05AM 14   Q.   GOOD MORNING, SIR.

10:05AM 15   A.   GOOD MORNING.

10:05AM 16   Q.   I'M NOT SURE THE LADIES AND GENTLEMEN OF THE JURY HEARD

10:05AM 17   YOUR NAME, SO CAN YOU JUST GO AHEAD AND PLEASE INTRODUCE

10:05AM 18   YOURSELF?

10:05AM 19   A.   I'M ANSHUL SADANA.

10:05AM 20   Q.   I DON'T BELIEVE WE MET BEFORE, SO I SHOULD INTRODUCE MYSELF

10:05AM 21   TO YOU. MY NAME IS DAVE NELSON AND I REPRESENT CISCO IN THIS

10:06AM 22   CASE, AND I WOULD LIKE TO ASK YOU SOME QUESTIONS THIS MORNING

10:06AM 23   ABOUT YOUR KNOWLEDGE OF THE CASE, OKAY?

10:06AM 24   A.   OKAY.

10:06AM 25   Q.   ALL RIGHT. THANK YOU, SIR.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:06AM   1   SO LET ME JUST GET THINGS CLEAR HERE BECAUSE IT'S A LITTLE

10:06AM   2   BACKWARDS.

10:06AM   3   YOU WORK FOR ARISTA NOW; IS THAT CORRECT?

10:06AM   4   A.   THAT'S RIGHT.

10:06AM   5   Q.   AND YOU WORKED FOR ARISTA SINCE I BELIEVE 2007?

10:06AM   6   A.   THAT'S CORRECT.

10:06AM   7   Q.   AND YOUR CURRENT POSITION, I THINK I HEARD, IS CHIEF

10:06AM   8   CUSTOMER OFFICER; IS THAT RIGHT?

10:06AM   9   A.   THAT'S CORRECT.

10:06AM   10   Q.   AND THAT'S A POSITION YOU'VE RECENTLY HAD, RIGHT?

10:06AM   11   A.   LAST MONTH.

10:06AM   12   Q.   LAST MONTH. WELL, CONGRATULATIONS. SO -- AND PRIOR TO

10:06AM   13   THAT, YOU WERE A SENIOR VICE PRESIDENT; IS THAT CORRECT?

10:06AM   14   A.   THAT'S CORRECT.

10:06AM   15   Q.   NOW PRIMARILY, I UNDERSTAND YOUR RESPONSIBILITIES BEING

10:06AM   16   CHIEF CUSTOMER OFFICER ARE TO INTERFACE WITH CUSTOMERS; IS THAT

10:06AM   17   RIGHT?

10:06AM   18   A.   YES.

10:06AM   19   Q.   AND YOU INTERFACE WITH THE ENGINEERS TO GIVE FEEDBACK ABOUT

10:06AM   20   WHAT THE CUSTOMERS ARE SAYING, RIGHT?

10:06AM   21   A.   THAT'S RIGHT.

10:06AM   22   Q.   SO NOW LET ME GET A COUPLE OF OTHER THINGS STRAIGHT. YOU

10:06AM   23   USED TO WORK FOR CISCO, RIGHT?

10:06AM   24   A.   RIGHT.

10:06AM   25   Q.   AND YOU WERE AT CISCO, I BELIEVE IN FACT, THAT WAS YOUR

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:07AM 1   FIRST FULL-TIME JOB AFTER YOU GOT YOUR MASTER'S DEGREE; IS THAT

10:07AM 2   CORRECT?

10:07AM 3   A.   THAT'S RIGHT.

10:07AM 4   Q.   1999, I THINK IT WAS?

10:07AM 5   A.   CORRECT.

10:07AM 6   Q.   AND YOU WERE AT CISCO THEN FROM 1999 TO 2007?

10:07AM 7   A.   YES.

10:07AM 8   Q.   AND BEFORE THE YOU JOINED CISCO THOUGH YOU HADN'T DONE ANY

10:07AM 9   KIND OF SOFTWARE DEVELOPMENT FOR NETWORKING EQUIPMENT, CORRECT?

10:07AM 10   A.   I HAD INTERNSHIP AT MOTOROLA, WHICH WAS ALSO NETWORKING

10:07AM 11   MOBILE COMPANY. SO I WAS INVOLVED IN THAT PROJECT. THAT WAS

10:07AM 12   THE EXPERIENCE RELATED TO NETWORKING AT OUR COMPANY. AND MY

10:07AM 13   MASTER THESIS WAS ALSO AT CISCO SYSTEMS, BUT IT INCLUDED

10:07AM 14   NETWORKING.

10:07AM 15   Q.   OKAY. THANK YOU, SIR. CAN YOU GO -- YOU HAVE A BINDER,

10:07AM 16   SOME OF YOUR PRIOR TESTIMONY.

10:07AM 17   A.   SURE.

10:07AM 18   Q.   AND IF WE GO, IF YOU GO TO THE ONE THAT'S DATED -- IT'S

10:08AM 19   2016-3-17. IT'S EUROPEAN STYLE, YEARS FIRST. AND IF YOU GO TO

10:08AM 20   PAGE 58.

10:08AM 21   AND JUST TO BE CLEAR, THIS IS SOME PRIOR TESTIMONY YOU'VE

10:08AM 22   GIVEN; IS THAT RIGHT?

10:08AM 23   A.   I THINK.

10:08AM 24   Q.   I WILL GIVE YOU A CHANCE, 58, LINE 17 TO 19, I BELIEVE.

10:08AM 25   A.   YES.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:08AM 1   Q.   AND YOU SEE THE QUESTION THERE, PRIOR TO CISCO, HAD YOU

10:08AM 2   DONE ANY TYPE OF SOFTWARE DEVELOPMENT FOR NETWORK EQUIPMENT,

10:08AM 3   ANSWER NOT FOR NETWORK EQUIPMENT?

10:08AM 4   A.   THAT'S RIGHT.

10:08AM 5   Q.   OKAY. SO NOW THEN YOU CAME DIRECTLY FROM CISCO TO ARISTA

10:08AM 6   IN 2007, CORRECT?

10:08AM 7   A.   THAT'S CORRECT.

10:08AM 8   Q.   NO COMPANIES IN BETWEEN?

10:08AM 9   A.   NO.

10:08AM 10 Q.   NOW WHEN YOU WERE AT CISCO, YOU WERE PART OF AN E-MAIL

10:09AM 11 GROUP CALLED THE PARSER-POLICE, RIGHT?

10:09AM 12 A.   YES, I WAS.

10:09AM 13 Q.   AND IN FACT, YOU PROPOSED SOME CLI COMMANDS AS PART OF YOUR

10:09AM 14 WORK AT CISCO, RIGHT?

10:09AM 15 A.   I DID.

10:09AM 16 Q.   AND YOU ALSO COMMENTED THROUGH THIS PARSER-POLICE E-MAIL ON

10:09AM 17 COMMANDS THAT OTHER FOLKS HAD PRESENTED, CORRECT?

10:09AM 18 A.   IF IT RELATED TO MY AREA OF EXPERTISE, THEN YES.

10:09AM 19 Q.   RIGHT. SO SOMETIMES YOU DID, RIGHT?

10:09AM 20 A.   YES.

10:09AM 21 Q.   AND YOU UNDERSTAND ON THIS PARSER-POLICE E-MAIL, PEOPLE

10:09AM 22 WOULD SOMETIMES EXPRESS DISAGREEMENT ABOUT HOW THE COMMANDS

10:09AM 23 SHOULD BE STRUCTURED, WHAT THEY SHOULD SAY, WHAT THEY SHOULD

10:09AM 24 BE, RIGHT?

10:09AM 25 A.   THAT'S CORRECT.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:09AM 1   Q.   AND THERE WAS E-MAILS GOING BACK AND FORTH AND HEALTHY

10:09AM 2   DISCUSSION ABOUT WHAT THOSE THINGS SHOULD BE, CORRECT?

10:09AM 3   A.   YES.

10:09AM 4   Q.   AND THAT WENT ON DURING THE TIME THAT YOU WERE AT CISCO FOR

10:09AM 5   THE CLI COMMAND DEVELOPMENT, RIGHT?

10:09AM 6   A.   YES.

10:09AM 7   Q.   NOW I WANT TO SWITCH GEARS A LITTLE BIT HERE. SO YOU'RE

10:09AM 8   AWARE THAT MANY OF THE SENIOR OFFICERS AND FOUNDERS OF ARISTA

10:09AM 9   CAME FROM CISCO, RIGHT?

10:10AM 10   A.   THAT'S CORRECT.

10:10AM 11   Q.   AND YOU KNOW THAT THERE ARE TIMES WHEN ARISTA HAS PUT

10:10AM 12   FEATURES IN ITS PRODUCTS WHERE IT WAS EMULATING FEATURES THAT

10:10AM 13   PRE-EXISTED IN CISCO PRODUCTS; ISN'T THAT RIGHT?

10:10AM 14   A.   THAT'S RIGHT.

10:10AM 15   Q.   NOW WHEN YOU CAME, LET ME JUST GO BACK IN TIME. YOU CAME

10:10AM 16   IN 2007, WAS IT LIKE MID-2007?

10:10AM 17   A.   JULY, 2007.

10:10AM 18   Q.   JULY 2007 SO PRETTY MUCH RIGHT SMACK IN THE MIDDLE OF 2007.

10:10AM 19   SO WHEN YOU CAME, ARISTA ACTUALLY HAD A SWITCH THAT WAS

10:10AM 20   RUNNING, I BELIEVE YOU DESCRIBED THEM AS CISCO-LIKE CLI'S

10:10AM 21   RIGHT?

10:10AM 22   A.   WE HAD A SWITCH THAT HAD A BASIC CLI, WE HAD VERY FEW

10:10AM 23   FEATURES AT THAT TIME, BUT IT WAS UP AND RUNNING IN THE LAB.

10:10AM 24   Q.   IT WAS UP AND RUNNING, AND IN FACT IN SEPTEMBER OF 2007,

10:10AM 25   YOU ACTUALLY SHIPPED ONE OF THOSE SWITCHES TO A MR. JEFF LAPIK

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:10AM 1   AT THE UNIVERSITY OF NEW HAMPSHIRE, RIGHT?

10:11AM 2   A.   THAT SOUNDS RIGHT.

10:11AM 3   Q.   AND THAT YOU TOLD HIM IT HAD CISCO-LIKE CLI'S, RIGHT?

10:11AM 4   A.   YES.

10:11AM 5   Q.   BUT THAT WAS RUNNING THE EOS; IS THAT RIGHT?

10:11AM 6   A.   YES.

10:11AM 7   Q.   EOS WAS CISCO-LIKE CLI'S RIGHT?

10:11AM 8   A.   CLI WAS CISCO-LIKE AT THAT TIME, YES.

10:11AM 9   Q.   NOW, BUT LET ME JUST GO THROUGH THE RESEARCH AND

10:11AM 10   DEVELOPMENT EXPENDITURES UP UNTIL THAT POINT.

10:11AM 11   A.   SURE.

10:11AM 12   Q.   NOW, IN 2005 YOU RECALL RESEARCH AND DEVELOPMENT, ARISTA'S

10:11AM 13   FINANCIAL INTO RESEARCH AND DEVELOPMENT WAS ABOUT $15,000; DOES

10:11AM 14   THAT SOUND ABOUT RIGHT?

10:11AM 15   A.   I JOINED IN 2007. WE CAN LOOK AT THE NUMBERS, BUT WE HAD A

10:11AM 16   FEW ENGINEERS THERE. 2005, PROBABLY WE HAD 4 OR 5 PEOPLE. SO

10:12AM 17   15,000 SOUNDS LOW, BUT I DON'T KNOW HOW THE COUNTING WOULD HAVE

10:12AM 18   BEEN DONE FOR IT, BUT IT WOULD BE IN SOME OF THE THAT RANGE.

10:12AM 19   Q.   OKAY. SO WE DON'T HAVE TO DO A MEMORY TEST, I WILL GIVE

10:12AM 20   YOU SOMETHING HERE THAT MAY REFRESH YOUR RECOLLECTION A BIT,

10:12AM 21   SOUND GOOD.

10:12AM 22   MAY I APPROACH, YOUR HONOR?

10:12AM 23   THE COURT: YES.

10:12AM 24   Q.   SO HERE, AND I'VE JUST MARKED THIS FOR IDENTIFICATION

10:12AM 25   PURPOSES IS 4817. EXHIBIT 4817.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:12AM 1   SO THIS IS A DEMONSTRATIVE THAT YOU PREPARED FOR SOME OTHER

10:12AM 2   TESTIMONY, RIGHT?

10:12AM 3   A.   RIGHT.

10:12AM 4   Q.   SO HERE IT SAYS ARISTA'S FINANCIAL INVESTMENT IN RESEARCH

10:12AM 5   AND DEVELOPMENT, RIGHT?

10:12AM 6   THE COURT: I'M SORRY, IF YOU ARE USING IT TO REFRESH

10:13AM 7   RECOLLECTION, YOU ARE NOT GOING TO EXPOSE THE CONTENT TO THE

10:13AM 8   JURY, YOU ARE GOING TO ASK THE WITNESS IF IT REFRESHES HIS

10:13AM 9   RECOLLECTION.

10:13AM 10   MR. NELSON: FAIR POINT, YOUR HONOR.

10:13AM 11   Q.   SO DOES THIS REFRESH YOUR RECOLLECTION ABOUT WHAT RESEARCH

10:13AM 12   EXPENDITURES WERE IN 2005, 2006 AND 2007?

10:13AM 13   A.   YES.

10:13AM 14   Q.   SO NOW YOU'VE HAD YOUR RECOLLECTION REFRESHED, SO NOW I

10:13AM 15   WILL ASK YOU YOUR RECOLLECTION.

10:13AM 16   SO IN 2005, $15,000, DOES THAT SOUND RIGHT?

10:13AM 17   A.   THAT'S CORRECT.

10:13AM 18   Q.   2006, $43,000; SOUND ABOUT RIGHT?

10:13AM 19   A.   THAT'S CORRECT.

10:13AM 20   Q.   AND FOR ALL OF 2007, $2,590,000; SOUND ABOUT RIGHT?

10:13AM 21   A.   THAT'S RIGHT.

10:13AM 22   Q.   OKAY. BUT THERE WAS A SWITCH, AN OPERATING SWITCH BY JULY,

10:13AM 23   SO MID-YEAR 2007, RIGHT, THAT WAS RUNNING A CISCO-LIKE CLI WITH

10:13AM 24   EOS WHEN YOU GOT THERE, RIGHT?

10:14AM 25   A.   WITH VERY FEW FEATURES, THAT'S RIGHT.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:14AM 1   Q.   WELL ENOUGH FEATURES SO THAT YOU SHIPPED ONE A COUPLE

10:14AM 2   MONTHS LATER TO MR. LAPIK, I BELIEVE IT IS, AT UNIVERSITY OF

10:14AM 3   NEW HAMPSHIRE, RIGHT?

10:14AM 4   A.   ENOUGH FEATURES TO TEST THE POWER, CORRECT.

10:14AM 5   Q.   SO THEN WE CAN SAY BY THAT TIME IT'S SOMEWHERE SOUTH FOR

10:14AM 6   2007 SOME WERE SOUTH OF $2.5 MILLION, RIGHT?

10:14AM 7   A.   YES.

10:14AM 8   Q.   MAYBE ABOUT HALF OF THAT?

10:14AM 9   A.   JULY IS MAJOR, SO YES.

10:14AM 10   Q.   SO THE TOTAL EXPENDITURE TO QUIET A SWITCH THAT HAD EOS AND

10:14AM 11   WAS RUNNING IOS-LIKE CLI, WAS LESS THAN $2 MILLION, RIGHT?

10:14AM 12   A.   YES, THAT'S CORRECT.

10:14AM 13   Q.   NOW YOU ARE AWARE THAT CISCO IN TERMS OF DEVELOPMENT ON ITS

10:14AM 14   PRODUCTS SPENDS NORTH OF $5 BILLION A YEAR ON RESEARCH AND

10:15AM 15   DEVELOPMENT, RIGHT?

10:15AM 16   A.   IN TODAY'S TIME, THAT SOUNDS RIGHT.

10:15AM 17   Q.   NOW, SIR, I WOULD LIKE TO TALK TO YOU ABOUT A FEW OTHER

10:15AM 18   THINGS HERE. SO IT'S TRUE THAT ARISTA INTENTIONALLY COPIED

10:15AM 19   CISCO'S CLI, RIGHT?

10:15AM 20   A.   IT'S TRUE THAT WE USED THE SAME CLI FOR MANY OF OUR BASE OR

10:15AM 21   CORE FEATURES.

10:15AM 22   Q.   AND INTENTIONALLY COPIED THAT, RIGHT?

10:15AM 23   A.   FOR THOSE CORE FEATURES, YES.

10:15AM 24   Q.   CORE FEATURES, IS THAT WHAT YOU SAID?

10:15AM 25   A.   THAT'S RIGHT.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:15AM 1   Q.   OKAY. AND YOU ACTUALLY TOLD, WHEN YOUR INTERACTIONS WITH

10:15AM 2   CUSTOMERS, THAT YOUR CLI IS JUST LIKE CISCO'S CLI, RIGHT?

10:15AM 3   A.   IN THE EARLY DAYS, YES, THAT'S TRUE.

10:15AM 4   Q.   OKAY. AND YOU KNOW THAT OTHERS AT ARISTA HAVE SAID THE

10:15AM 5   SAME THINGS TO CUSTOMERS, RIGHT?

10:16AM 6   A.   YES.

10:16AM 7   Q.   NOW I WANT TO TURN TO YOUR BINDER. IN EXHIBIT 197, THIS

10:16AM 8   WAS ACTUALLY JUST MOVED INTO EVIDENCE. SO WE DON'T NEED TO DO

10:16AM 9   THAT.

10:16AM 10   SO IF YOU COULD JUST DISPLAY EXHIBIT 197 AGAIN, MR. FISHER.

10:16AM 11   SO THIS IS AN E-MAIL, THE WHOLE EXHIBIT, AND YOU CAN GO

10:16AM 12   FLIP THROUGH, WOULD BE AN E-MAIL STRING BETWEEN MR. DUDA,

10:16AM 13   MR. SWEENEY, MR. HAFEEZ AND YOURSELF?

10:16AM 14   A.   THAT'S RIGHT.

10:16AM 15   Q.   NOW I JUST WANT TO ASK YOU A FEW QUESTIONS ABOUT THIS. SO

10:16AM 16   IF WE CAN GO BACK, AND I THINK IN TIME, THESE KIND OF GO IN

10:16AM 17   REVERSE ORDER MEANING THE OLDEST ONE IS AT THE BACK?

10:17AM 18   A.   THAT'S RIGHT.

10:17AM 19   Q.   SO LET'S KIND OF GO BACK THERE AND LOOK AT THE VERY LAST

10:17AM 20   ONE. THIS STARTS, THE LAST PAGE WOULD BE PAGE 3 OF THAT.

10:17AM 21   SO THAT'S AN E-MAIL FROM MR. SWEENEY TO YOURSELF, RIGHT?

10:17AM 22   A.   THAT'S RIGHT.

10:17AM 23   Q.   AND HE'S EXPRESSING, YOUR UNDERSTANDING, SOME OPINIONS ON

10:17AM 24   CLI FUNCTIONALITY RELATED TO A FEATURE CALLED ACL, RIGHT?

10:17AM 25   A.   THAT'S CORRECT.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:17AM 1   Q.   AND ACL STANDS FOR SOMETHING LIKE ACCESS CONTROL LIST, MAKE

10:17AM 2   SENSE?

10:17AM 3   A.   YES.

10:17AM 4   Q.   NOW, MR. SWEENEY, YOU UNDERSTOOD AT THE TIME, HAD SOME

10:17AM 5   IDEAS FOR HOW TO DO AN ALTERNATIVE CLI IMPLEMENTATION FOR ACL

10:17AM 6   CONFIGURATION, RIGHT?

10:17AM 7   A.   THAT'S RIGHT.

10:17AM 8   Q.   SO THEN LET'S GO A LITTLE BIT FORWARD AND I THINK -- WHAT

10:18AM 9   WAS YOUR RESPONSE TO THAT? AND IF WE COULD BLOW THAT UP.

10:18AM 10   ACTUALLY, ON THE NEXT PAGE. YEAH, IT WILL BE PAGE 4.

10:18AM 11   YOU WERE IN THE RIGHT PLACE, AND I SAID PAGE 3, I MEANT THE

10:18AM 12   VERY END, PAGE 4. SORRY. SO PAGE 4.

10:18AM 13   SO LET ME JUST LOOK AT IT. YOU SEE IN THE MIDDLE OF THE

10:18AM 14   PAGE 4, THERE'S YOUR RESPONSE -- AS MR. FISHER IS WORKING ON

10:18AM 15   BLOWING THAT UP.

10:18AM 16   IT SAYS, AS WE SELL TO CUSTOMERS AND ALSO TRY TO GET

10:19AM 17   CHANNEL PARTNERS LINED UP, WE CONSISTENTLY GET FEEDBACK ON ONE,

10:19AM 18   PLEASE DO NOT ASK MY TEAM TO LEARN YET ANOTHER CLI. BOTH IOS

10:19AM 19   AND JUNOS ARE ACCEPTABLE INDUSTRY STANDARDS WITH IOS BEING

10:19AM 20   PREFERRED. AND TWO, EITHER COPY IOS COMPLETELY OR DON'T COPY

10:19AM 21   AT ALL. WHEN 90 PERCENT OF FEATURES WORK LIKE IOS, AND SOME

10:19AM 22   DON'T, THE CUSTOMERS GET BUGGED.

10:19AM 23   DO YOU SEE THAT?

10:19AM 24   A.   I SEE THAT.

10:19AM 25   Q.   SO THAT WAS THE FEEDBACK YOU WERE GETTING FROM CUSTOMERS,

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:19AM   1   RIGHT?

10:19AM   2   A.   AT THAT TIME, YES.

10:19AM   3   Q.   IN OTHER WORDS, COPY IOS COMPLETELY OR DON'T COPY IT AT

10:19AM   4   ALL, RIGHT?

10:19AM   5   A.   THIS IS DESCRIBING IN AN E-MAIL, THE FEEDBACK WAS USE THE

10:19AM   6   CLI THAT MIGHT BE AS FAMILIAR WITH AND THIS WAS THE INDUSTRY

10:19AM   7   STANDARD AT THAT POINT.

10:19AM   8   Q.   SO I GOT QUESTIONS ABOUT THAT FIRST ONE. SO YOU SAY HERE

10:20AM   9   THAT BOTH IOS AND JUNOS ARE ACCEPTABLE INDUSTRY STANDARDS; IS

10:20AM   10   THAT RIGHT?

10:20AM   11   A.   DEPENDING ON THE CUSTOMER, THAT'S RIGHT.

10:20AM   12   Q.   SO JUNOS, THAT'S DIFFERENT THAN IOS, RIGHT?

10:20AM   13   A.   FOR SOME COMMANDS, IT IS SIMILAR, BUT FOR MANY OTHER

10:20AM   14   COMMANDS IT'S DIFFERENT.

10:20AM   15   Q.   RIGHT. SO IT'S -- THERE'S A LOT OF DIFFERENCES BETWEEN YOU

10:20AM   16   UNDERSTAND JUNOS AND CISCO'S IOS, RIGHT?

10:20AM   17   A.   THAT'S RIGHT.

10:20AM   18   Q.   YET YOU DESCRIBE THEM BOTH AS INDUSTRY STANDARDS, RIGHT?

10:20AM   19   A.   DEPENDING ON THE CUSTOMER.

10:20AM   20   Q.   OKAY. SO YOU ARE SAYING INDUSTRY STANDARD IS

10:20AM   21   CUSTOMER-SPECIFIC?

10:20AM   22   A.   WORD-SPECIFIC.

10:20AM   23   Q.   SO WHAT YOU ARE SAYING IS CISCO CUSTOMERS ARE ONE INDUSTRY

10:20AM   24   AND MAYBE JUNIPER CUSTOMERS ARE ANOTHER INDUSTRY, RIGHT?

10:20AM   25   A.   NO.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:20AM 1   Q.   OKAY. BUT IT'S TWO INDUSTRY STANDARDS WE GOT SO FAR,

10:20AM 2   RIGHT?

10:20AM 3   A.   DEPENDING ON THE WORDING. JUNIPER WAS A SERVICE PROVIDER

10:20AM 4   SELLING ROUTERS, NOT SWITCHES. SO THE CUSTOMER WAS FAMILIAR

10:20AM 5   WITH JUNIPER ROUTERS IN THE SERVICE PROVIDER SPACE. THEY WOULD

10:21AM 6   CONSIDER JUNOS CLI ACCEPTABLE.

10:21AM 7   BUT CISCO HAD 80 PERCENT MARKET SHARE IN SWITCHING, SO

10:21AM 8   MAJORITY OF THE WORLD, THEY WERE MORE FAMILIAR WITH THE

10:21AM 9   CISCO-LIKE CLI. AND NOT ARISTA ALONE, BUT MANY OF THE

10:21AM 10   COMPANIES ARE WERE USING THE SAME CLI AT THAT TIME.

10:21AM 11   Q.   RIGHT.

10:21AM 12   SO YOU USED THE TERM INDUSTRY STANDARD TO DESCRIBE WHAT YOU

10:21AM 13   JUST DESCRIBED FOR US HERE IN COURT, RIGHT?

10:21AM 14   A.   YES, THE DE FACTO INDUSTRY STANDARD.

10:21AM 15   Q.   SO YOU ARE JUST SAYING IT'S POPULAR IN THE INDUSTRY, RIGHT?

10:21AM 16   A.   YES.

10:21AM 17   Q.   THAT'S ALL WE ARE TALKING ABOUT, IT'S JUST POPULAR IN THE

10:21AM 18   INDUSTRY?

10:21AM 19   A.   I AGREE.

10:21AM 20   Q.   OKAY. I JUST WANTED TO CLEAR THAT UP BECAUSE WE HAVE BEEN

10:21AM 21   GOING AROUND ON THIS, BUT I APPRECIATE THAT.

10:21AM 22   SO THE -- AND THERE ARE OTHER VENDORS OUT THERE THAT YOU

10:21AM 23   UNDERSTAND FROM YOUR WORK THAT USE DIFFERENT COMMAND

10:21AM 24   STRUCTURES, RIGHT?

10:21AM 25   A.   AT THE TIME, VERY FEW, MOST ACTUALLY USE THE IOS-LIKE CLI.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:22AM 1   Q.   RIGHT BUT THEY ALSO USED OTHER THINGS, CORRECT?

10:22AM 2   A.   YOU MEAN SOME COMPANIES USED OTHERS.

10:22AM 3   Q.   CORRECT.

10:22AM 4   A.   YES.

10:22AM 5   Q.   SO NOW, I WANT TO MOVE A LITTLE BIT FORWARD IN THIS E-MAIL

10:22AM 6   STRING, THAT IS, AND LOOK AT THE NEXT EXCHANGE.

10:22AM 7   AND THIS -- I WANT TO LOOK AT YOUR RESPONSE, THIS ONE IS ON

10:22AM 8   PAGE 2, SO IT SHOULD BE JULY 21ST, 2009.

10:22AM 9   AND I BELIEVE WHAT WE ARE LOOKING AT HERE IS AGAIN I

10:22AM 10 BELIEVE A RESPONSE TO A QUESTION FROM MR. SWEENEY ABOUT CLI

10:22AM 11 FUNCTIONALITY CONCERNING ACCESS CONTROL LIST, RIGHT?

10:23AM 12 A.   THAT'S RIGHT.

10:23AM 13 Q.   SO YOUR RESPONSE IS YES, PICKING THE BEST OF IOS, NX-OS AND

10:23AM 14 IOS XR WILL CERTAINLY WORK, RIGHT?

10:23AM 15 A.   CORRECT.

10:23AM 16 Q.   SO JUST SO WE ARE CLEAR, IOS, NX-OS, AND IOS XR ARE ALL

10:23AM 17 CISCO OPERATING SYSTEMS, CORRECT?

10:23AM 18 A.   THAT'S CORRECT.

10:23AM 19 Q.   NOW ISN'T IT TRUE, THOUGH, SIR, THAT YOU DON'T THINK THAT

10:23AM 20 NX-OS IS AN INDUSTRY STANDARD OPERATING SYSTEM?

10:23AM 21 A.   AT THAT TIME, CORRECT, IT WASN'T INDUSTRY STANDARD.

10:23AM 22 Q.   OKAY. SO NX-OS NOT AN INDUSTRY STANDARD OPERATING SYSTEM?

10:23AM 23 A.   IT WAS NOT AS COMMONLY USED AS IOS. AND NX-OS WAS

10:23AM 24 INTRODUCED MAYBE AROUND 2008 BY CISCO, IT WAS JUST ONE YEAR

10:23AM 25 INTO THE LIFE OF THE PRODUCT.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:23AM 1   Q.   OKAY. AND IF WE -- I MEAN, WE CAN LOOK, I THINK IT'S

10:24AM 2   EXHIBIT 388 IN YOUR BINDER. IT SHOULD BE A POWERPOINT

10:24AM 3   PRESENTATION. YOU WILL HAVE THAT IN FRONT OF YOU.

10:24AM 4   DO YOU RECOGNIZE THIS POWERPOINT PRESENTATION OR

10:24AM 5   PRESENTATIONS LIKE IT?

10:24AM 6   A.   388?

10:24AM 7   Q.   388, IT SHOULD BE TAB 388.

10:24AM 8   A.   OKAY.

10:24AM 9   Q.   SO YOU RECOGNIZE THIS AS AN ARISTA POWERPOINT PRESENTATION?

10:24AM 10   A.   THAT'S CORRECT.

10:24AM 11   Q.   THESE ARE THE KIND THAT YOU WOULD PREPARE OR YOUR TEAM

10:24AM 12   WOULD PREPARE IN YOUR ROLE AS IT IS -- WELL, USED TO BE A

10:24AM 13   SENIOR VICE PRESIDENT NOW A CUSTOMER DEVELOPMENT OFFICER?

10:25AM 14   A.   THAT'S RIGHT.

10:25AM 15   MR. NELSON: SO CAN I MOVE 388 INTO EVIDENCE

10:25AM 16   YOUR HONOR?

10:25AM 17   THE COURT: ANY OBJECTION?

10:25AM 18   MR. SILBERT: NO OBJECTION.

10:25AM 19   THE COURT: IT WILL BE ADMITTED.

10:25AM 20   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 388, HAVING BEEN

10:25AM 21   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

10:25AM 22   EVIDENCE.)

10:25AM 23   BY MR. NELSON:

10:25AM 24   Q.   SO I WANT TO LOOK AT -- THERE'S A LITTLE NUMBERS AT THE END

10:25AM 25   AND I THINK IT ENDS WITH 915.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:25AM 1   A.   YES.

10:25AM 2   Q.   SO YOU SEE ARISTA EOS VERSUS CISCO NX-OS, RIGHT?

10:25AM 3   A.   YES.

10:25AM 4   Q.   AND HERE, FOR ARISTA EOS, THAT'S THE ARISTA OPERATING

10:25AM 5   SYSTEM, RIGHT?

10:25AM 6   A.   THAT'S CORRECT.

10:25AM 7   Q.   YOU DESCRIBE IT AS STANDARD CLI?

10:25AM 8   A.   CORRECT.

10:25AM 9   Q.   RIGHT. AND FOR NX-OS, YOU SAY IT VARIES FROM INDUSTRY

10:26AM 10   STANDARD, RIGHT?

10:26AM 11   A.   THAT'S CORRECT.

10:26AM 12   Q.   AND HERE IN 2009 YOU ARE TELLING MR. SWEENEY THAT IT'S OKAY

10:26AM 13   TO COPY FROM NX-OS, RIGHT?

10:26AM 14   A.   TO USE THE SAME CLI OR SIMILAR CLI FOR THE ACL

10:26AM 15   FUNCTIONALITY.

10:26AM 16   Q.   SO IT'S OKAY TO COPY FROM NX-OS, EVEN THOUGH NX-OS YOU

10:26AM 17   DON'T BELIEVE IS AN INDUSTRY STANDARD, RIGHT?

10:26AM 18   A.   WELL I WOULD HAVE TO GO BACK AND LOOK. THE ACL CLI, THE

10:26AM 19   NX-OS AND IOS MIGHT NOT BE THAT DIFFERENT AT ALL IN THAT

10:26AM 20   TIMEFRAME.

10:26AM 21   Q.   OKAY. BUT THAT'S NOT WHAT YOU SAID HERE, RIGHT, I'M GOING

10:26AM 22   BACK TO EXHIBIT 197. AND WE WILL JUST PICK IT UP. YES,

10:26AM 23   PICKING THE BEST OF IOS, NX-OS, AND IOS XR WILL CERTAINLY WORK,

10:26AM 24   RIGHT?

10:26AM 25   A.   THAT'S BECAUSE THE TEAM THAT WAS DISCUSSING THIS

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:26AM 1   UNDERSTANDS THE CLI THAT IS INVOLVED IN THESE OPERATING SYSTEMS

10:26AM 2   ARE THIS FEATURE.

10:27AM 3   Q.   SO JUST TO BE CLEAR, NX-OS, NOT AN INDUSTRY STANDARD

10:27AM 4   OPERATING SYSTEM, RIGHT?

10:27AM 5   A.   NX-OS HAS SEVERAL DIFFERENCES FROM IOS OR THE INDUSTRY

10:27AM 6   STANDARD BUT FOR MANY OF THE COMMANDS IT ALSO HAD SIMILARITIES.

10:27AM 7   SO DEPENDING ON THE FEATURE, IT WOULD LIKE TO PICK THE BEST AND

10:27AM 8   CONFIGURE FOR THAT CONFIGURATION.

10:27AM 9   Q.   SO YOU SAY PICKING THE BEST IOS AND NX-OS, LET'S JUST STOP

10:27AM 10   THERE.   YOU ARE SAYING THERE'S OVERLAP IN THE TWO?

10:27AM 11   A.   THERE IS SOME.

10:27AM 12   Q.   SO THAT WOULDN'T MAKE TOO MUCH SENSE THAT YOU ARE SAYING IF

10:27AM 13   I CAN THIS STUFF IN NX-OS THAT'S LIMITED TO WHAT'S IN IOS,

10:27AM 14   RIGHT?

10:27AM 15   A.   CAN YOU REPEAT THE QUESTION?

10:27AM 16   Q.   YEAH, SO I'M JUST TRYING TO EXPLORE THIS A BIT.

10:27AM 17   YOU ARE TELLING ME THERE MIGHT BE SOME COMMANDS IN NX-OS

10:27AM 18   THAT YOU THINK ARE INDUSTRY STANDARD BECAUSE THEY ARE ALSO ON

10:27AM 19   IOS, RIGHT?

10:27AM 20   A.   THIS PARTICULAR, THIS QUESTION IS ABOUT ACL AND HOW ACL

10:28AM 21   CONFIGURATION HAS EVOLVED.   WE NEED THAT CONTEXT.   WHAT YOU ARE

10:28AM 22   SAYING IS NOT APPLICABLE, THIS ENTIRE QUESTION IS ABOUT ACL.

10:28AM 23   Q.   OKAY.   BUT YOU ARE SAYING PICK THE BEST OF IOS AND NX-OS,

10:28AM 24   RIGHT?

10:28AM 25   A.   IF THERE'S AN ENHANCEMENT IN THE INDUSTRY, THAT CUSTOMERS

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:28AM 1   START USING AND THEY LIKE THEN WE WOULD LOOK AT IT AND THAT'S

10:28AM 2   THE CONTEXT.

10:28AM 3   Q.   UNDERSTOOD. BUT IF YOU ARE JUST SAYING PICK THE STUFF IN

10:28AM 4   NX-OS THAT'S ALSO IN IOS, YOU WOULD JUST SAY PICK THE BEST OF

10:28AM 5   IOS, WOULDN'T THAT MAKE MORE SENSE?

10:28AM 6   A.   THAT'S THE SAME, THAT'S RIGHT.

10:28AM 7   Q.   SO DO YOU KNOW THAT IN THIS CASE, THAT THERE IS AN

10:28AM 8   ALLEGATION THAT ARISTA HAS COPIED DOZENS OF COMMANDS THAT ONLY

10:28AM 9   APPEAR IN NX-OS, NOT IN IOS?

10:28AM 10 A.   I'M NOT AWARE OF THAT SPECIFIC ACQUISITION.

10:28AM 11 Q.   BUT YOU WOULD AGREE THAT AS YOU SAID EARLIER IF THEY ARE

10:29AM 12 ONLY IN NX-OS AND NOT IN IOS, NOT AN INDUSTRY STANDARD?

10:29AM 13 A.   NX-OS IS FOR DATA CENTER SWITCHES, THERE MAY BE CERTAIN

10:29AM 14 FEATURES THAT DON'T EXIST IN OTHER CISCO PRODUCTS.

10:29AM 15 Q.   SO THEN LET ME MOVE FORWARD IN EXHIBIT 197 HERE.

10:29AM 16   THE NEXT PART OF YOUR RESPONSE, IT ACTUALLY CARRIES OVER TO

10:29AM 17 PAGE 3.

10:29AM 18   AND IT SAYS, HENCE, IF WE STAY WITH CISCO'S SYNTAX AND BEST

10:29AM 19 OF BREED FEATURES USABILITY, THAT WILL WORK WELL. WE JUST WANT

10:29AM 20 TO LEVERAGE ALL THE PARTNER TRAINING THAT CISCO DOES, WINKY

10:29AM 21 FACE; RIGHT?

10:29AM 22 A.   RIGHT.

10:29AM 23 Q.   OKAY. SO YOU ARE SAYING LET'S GO OUT AND STICK WITH CISCO

10:29AM 24 SYNTAX AND FEATURES AND USABILITIES SO THAT WE CAN LEVERAGE ALL

10:30AM 25 THE PARTNER TRAINING THAT CISCO DID, RIGHT?

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:30AM   1   A.   YES.

10:30AM   2   Q.   SO IN OTHER WORDS, COPY CISCO BECAUSE THERE ARE CISCO

10:30AM   3   CUSTOMERS OUT THERE THAT ALREADY HAVE BEEN TRAINED BY CISCO,

10:30AM   4   RIGHT?

10:30AM   5   A.   IN THIS CASE, PARTNERS WHO HAVE TAKEN THAT TRAINING.

10:30AM   6   PARTNERS SPENT A LOT OF TIME TAKING THAT TRAINING.

10:30AM   7   Q.   OKAY. AND YOU GOT A LITTLE WINKY FACE THERE TOO, RIGHT?

10:30AM   8   A.   THAT'S RIGHT.

10:30AM   9   Q.   ALL RIGHT. SO LET ME MOVE FORWARD A LITTLE BIT TO ANOTHER

10:30AM   10   IN THIS STRING OF 197, IN YOUR E-MAILS HERE, THAT SAYS, THIS IS

10:30AM   11   THE ONE FROM JULY 21ST, 2009.

10:30AM   12   AND THIS IS CONTINUING ON THAT SAME ACCESS CONTROL LIST

10:30AM   13   TOPIC, CORRECT?

10:30AM   14   A.   THAT'S CORRECT.

10:30AM   15   Q.   AND IF YOU DROP RIGHT AT THE BOTTOM OF PAGE 1 YOU WILL SEE,

10:31AM   16   I WANT TO REITERATE THE GENERAL MODEL WE HAVE BEEN FOLLOWING.

10:31AM   17   WE HAVE PICKED IOS AS THE CLI MODEL FOR OUR PRODUCTS. JUNOS

10:31AM   18   MAY BE A LOT BETTER BUT WE DECIDED TO EMBRACE IOS, RIGHT?

10:31AM   19   A.   THAT'S RIGHT.

10:31AM   20   Q.   AND THAT WAS A TRUE STATEMENT, RIGHT?

10:31AM   21   A.   IT REFERRED TO THE INDUSTRY STANDARD AT THAT POINT, SO

10:31AM   22   THAT'S RIGHT.

10:31AM   23   Q.   RIGHT. AND YOU ARE CONTRASTING JUNOS AND IOS, CORRECT?

10:31AM   24   A.   IN THIS CONTEXT, YES.

10:31AM   25   Q.   SO YOU ARE SAYING LET'S FOLLOW IOS THAT I SAY IS AN

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:31AM 1   INDUSTRY STANDARD AS OPPOSED TO JUNOS THAT I ALSO SAY IS AN

10:31AM 2   INDUSTRY STANDARD, RIGHT?

10:31AM 3   A.   DEPENDING ON THE CUSTOMER, YES.

10:31AM 4   Q.   SO YOU WERE MORE INTERESTED IN CISCO'S CUSTOMERS THAN

10:31AM 5   JUNIPER'S CUSTOMERS, RIGHT?

10:31AM 6   A.   WE WERE MORE INTERESTED IN THE LARGER ENTERPRISES, AND IN

10:31AM 7   SWITCHING, THAT'S WHERE CISCO HAD A MUCH BIGGER MARKET SHARE.

10:32AM 8   Q.   ALL RIGHT, SIR. SO LET ME MOVE TO ANOTHER TOPIC HERE.

10:32AM 9   THE COURT: MAYBE THIS WOULD BE A GOOD TIME FOR OUR

10:32AM 10   BREAK THEN. WOULD THAT BE ALL RIGHT?

10:32AM 11   MR. NELSON: YES. THANK YOU, YOUR HONOR.

10:32AM 12   THE COURT: ALL RIGHT. LET'S TAKE OUR MORNING BREAK.

10:32AM 13   WE WILL COME BACK AT A QUARTER TO 11:00.

10:32AM 14   (WHEREUPON A RECESS WAS TAKEN.)

10:46AM 15   THE COURT: WE ARE BACK ON THE RECORD AND ALL OF OUR

10:46AM 16   JURORS ARE HERE.

10:46AM 17   MR. NELSON, WOULD YOU LIKE TO CONTINUE?

10:46AM 18   MR. NELSON: YES, THANK YOU, YOUR HONOR.

10:46AM 19   Q.   WELCOME BACK, SIR.

10:47AM 20   SO I WANT YOU TO TURN TO EXHIBIT 376 IN YOUR BINDER.

10:47AM 21   AND -- 376. IT'S KIND OF THE TAB HIDES, IT HID ON ME, IT'S THE

10:47AM 22   TOP, IT SHOULD BE RIGHT BEHIND 370.

10:47AM 23   A.   374 AND 378.

10:47AM 24   Q.   370 THEN --

10:47AM 25   THE COURT: IT IS, IT'S OUT OF ORDER. IT'S BEFORE

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:47AM 1 371. YOU ARE REALLY KEEPING US HOPPING TODAY.

10:47AM 2   MR. NELSON: OOPS. SORRY. I HAVE NUMERICAL

10:47AM 3 CHALLENGES, YOUR HONOR.

10:47AM 4   THE COURT: DID YOU FIND IT?

10:47AM 5   THE WITNESS: YES.

10:47AM 6 Q. 376, ARE YOU THERE?

10:47AM 7 A. YES.

10:47AM 8 Q. SO THE COVER IS AN E-MAIL FROM YOURSELF TO SEVT@ARISTA

10:48AM 9 NETWORKS, THEN COPYING SOME OTHER FOLKS INCLUDING DAVE HEYMAN,

10:48AM 10 RIGHT?

10:48AM 11 A. THAT'S RIGHT.

10:48AM 12 Q. AND IT ATTACHES ARISTA EOS VERSUS CISCO NX-OS USABILITY

10:48AM 13 COMPARISON, DO YOU SEE THAT?

10:48AM 14 A. YES.

10:48AM 15 Q. THEN ATTACHED AS THE REST OF THIS EXHIBIT IS THAT ACTUAL

10:48AM 16 USABILITY COMPARISON STUDY, CORRECT?

10:48AM 17 A. THAT'S CORRECT.

10:48AM 18 Q. NOW, AND THIS WAS SOMETHING THAT WAS PREPARED TO COMPARE

10:48AM 19 EOS WITH CISCO NX-OS; IS THAT RIGHT?

10:48AM 20 A. THAT'S RIGHT.

10:48AM 21 Q. SO CAN I HAVE, MOVE EXHIBIT 376 INTO EVIDENCE, YOUR HONOR?

10:48AM 22   MR. FERRALL: SO OBJECTION.

10:48AM 23   THE COURT: IT WILL BE ADMITTED.

10:48AM 24   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 376, HAVING BEEN

10:48AM 25 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:48AM   1   EVIDENCE.)

10:48AM   2   BY MR. NELSON:

10:48AM   3   Q.   SO IF YOU LOOK AT THE FIRST PAGE THERE YOU WILL SEE THERE'S

10:48AM   4   A SUMMARY.

10:48AM   5   FIRST OF ALL, I SHOULD ASK YOU ABOUT THE VERY FIRST

10:48AM   6   SENTENCE. ATTACHED IS A STUDY DAVE HEYMAN DID.

10:49AM   7   DO YOU SEE THAT?

10:49AM   8   A.   YES.

10:49AM   9   Q.   WHO IS MR. HEYMAN?

10:49AM 10   A.   DAVE HEYMAN WAS THE RESPONSIBILITY FOR CUSTOMER SUPPORT.

10:49AM 11   Q.   CUSTOMER SUPPORT AT ARISTA?

10:49AM 12   A.   YES.

10:49AM 13   Q.   DURING THE TIME PERIOD HERE?

10:49AM 14   A.   AT THAT TIME HE WAS ONE OF OUR SUPPORT ENGINEERS.

10:49AM 15   Q.   AND MR. HEYMAN YOU SAID WAS -- I TAKE IT HE'S NO LONGER

10:49AM 16   WITH ARISTA?

10:49AM 17   A.   THAT'S CORRECT.

10:49AM 18   Q.   SO IF I GO DOWN TO THE SECOND PARAGRAPH THERE, IT SAYS THE

10:49AM 19   SUMMARY HERE IS THAT WE ARE FAIRLY CLOSE TO CISCO IOS WHEN IT

10:49AM 20   COMES TO USABILITY. IF A CUSTOMER DOES COMPLAIN ABOUT SMALL

10:49AM 21   DIFFERENCES, THEN YOU CAN USE THIS DOC AS A REFERENCE. IT

10:49AM 22   TAKES JUST AS MUCH WORK TO MIGRATE FROM IOS TO NX-OS, IF NOT

10:49AM 23   MORE, COMPARED TO WHEN MOVING FROM IOS TO ARISTA EOS.

10:49AM 24   DO YOU SEE THAT?

10:49AM 25   A.   YES.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:49AM 1   Q.   SO BASED ON THE USABILITY STUDY, WHAT YOU WERE SAYING IS GO

10:50AM 2   OUT TO CUSTOMERS AND TELL THEM ARISTA EOS IS MORE LIKE CISCO

10:50AM 3   IOS THAN CISCO'S NX-OS OPERATING SYSTEM, RIGHT?

10:50AM 4   A.   WITH RESPECT TO THE CLI.

10:50AM 5   Q.   RIGHT. WITH RESPECT TO THE CLI.

10:50AM 6   A.   THAT'S CORRECT.

10:50AM 7   Q.   OKAY. ALL RIGHT, SIR. LET'S MOVE ON TO ANOTHER DOCUMENT.

10:50AM 8   AND PLEASE TURN TO EXHIBIT 370 IN YOUR BINDER.

10:50AM 9   SO THIS IS AN E-MAIL FROM YOURSELF TO A MAILING GROUP ENG

10:50AM 10   AT ARISTA NETWORKS.COM; DO YOU SEE THAT

10:50AM 11   A.   YES.

10:50AM 12   Q.   AND ENG, I TAKE IT THAT'S THE ENGINEER COMMUNITY?

10:50AM 13   A.   THAT'S CORRECT.

10:50AM 14   Q.   AND I THINK YOU SAID AT THIS TIME THAT WAS PROBABLY AT

10:50AM 15   LEAST 50 TO 100 EMPLOYEES IN ARISTA; IS THAT RIGHT?

10:51AM 16   A.   THAT SOUNDS RIGHT.

10:51AM 17   Q.   AND THIS IS AS OF THE TIME OF THE E-MAIL, 2010?

10:51AM 18   A.   MARCH 2010, CORRECT.

10:51AM 19   MR. NELSON: AT THIS POINT, I MOVE FOR EXHIBIT 370

10:51AM 20   INTO EVIDENCE, YOUR HONOR.

10:51AM 21   MR. FERRALL: NO OBJECTION.

10:51AM 22   THE COURT: IT WILL BE ADMITTED.

10:51AM 23   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 370, HAVING BEEN

10:51AM 24   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

10:51AM 25   EVIDENCE.)

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:51AM 1   BY MR. NELSON:

10:51AM 2   Q.   SO HERE AS OF MARCH OF 2010 YOU'RE TELLING THE ENGINEERING

10:51AM 3   COMMUNITY HIGH ALL, ONE OF THE COMPLAINTS WE GET FROM CUSTOMERS

10:51AM 4   IS THAT THERE ISN'T SUFFICIENT DOCUMENTATION OF OUR PRODUCTS.

10:51AM 5   WHEN WE WERE SMALLER IT WAS EASY TO SAY THAT OUR CLI IS JUST

10:51AM 6   LIKE IOS AND THE CUSTOMER COULD READ CISCO'S DOCS.

10:51AM 7   DO YOU SEE THAT?

10:51AM 8   A.   YES.

10:51AM 9   Q.   SO PRIOR TO THIS TIME IN 2010, AT LEAST, WHAT YOU WERE

10:51AM 10   TELLING CUSTOMERS, ARISTA WAS TELLING CUSTOMERS, JUST READ THE

10:51AM 11   CISCO DOCUMENTATION AND YOU WILL KNOW HOW TO USE OUR CLI,

10:51AM 12   RIGHT?

10:51AM 13   A.   NO, THAT'S WHAT WE WERE SAYING INTERNALLY. THE CLI WAS

10:51AM 14   SIMILAR AT THAT TIME FOR THE CORE COMMANDS, MANY CUSTOMERS IN

10:52AM 15   FACT DID NOT NEED DOCUMENTATION THEY KNEW HOW TO USE THE

10:52AM 16   COMMANDS. BUT THIS IS WHAT WE WERE SEEING INTERNALLY.

10:52AM 17   Q.   OKAY. IT SAYS WHEN WE WERE SMALLER, IT WAS EASY TO SAY

10:52AM 18   THAT OUR CLI IS JUST LIKE IOS AND THE CUSTOMER COULD READ

10:52AM 19   CISCO'S DOCS, RIGHT?

10:52AM 20   A.   YES.

10:52AM 21   Q.   OKAY. SO YOU ARE TELLING THE CUSTOMERS, SORRY, WE DON'T

10:52AM 22   HAVE DOCUMENTATION, BUT OUR CLI IS JUST LIKE CISCO'S CLI,

10:52AM 23   CORRECT?

10:52AM 24   A.   NO, THIS IS AN INTERNAL DISCUSSION. THIS IS WHAT WE WERE

10:52AM 25   TELLING ARISTA SYSTEMS ENGINEERS IF THEY ASK FOR DOCUMENTATION

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:52AM   1   THAT THE CLI IS VERY SIMILAR, THERE'S NOT A DOCUMENT TO KNOW

10:52AM   2   HOW TO USE THE CLI.

10:52AM   3   IF THEY NEED IT, THEY COULD GO AND READ CISCO'S DOCS, OR

10:52AM   4   ANY OTHER COMPANY'S, BUT CISCO WAS THE INDUSTRY STANDARD AT

10:52AM   5   THAT TIME IN THE MARKET SHARE. SO IF YOU GO AND GOOGLE OTHER

10:53AM   6   FEATURES, THE FIRST TO COME UP WOULD BE THE CISCO DOC.

10:53AM   7   Q.   I THINK YOU MISSPOKE THERE, I THINK YOU SAID CISCO WAS

10:53AM   8   INDUSTRY STANDARD AT THAT TIME, RIGHT?

10:53AM   9   A.   GIVEN THEY HAD 80 PERCENT MARKET SHARE.

10:53AM   10   Q.   RIGHT. BUT IF WE LOOK BACK AT 2009 YOU ALSO SAID JUNOS WAS

10:53AM   11   THE INDUSTRY STANDARD, CORRECT?

10:53AM   12   A.   I SAID EARLIER, AGAIN, FOR SERVICE PROVIDER CUSTOMERS WHO

10:53AM   13   USE ROUTER, THEY CONSIDERED JUNOS A STANDARD AS WELL.

10:53AM   14   Q.   OKAY. SO NOW, LET ME MOVE FORWARD A BIT, AND I WOULD LIKE

10:53AM   15   YOU TO TURN TO EXHIBIT 3623 WHICH IS KIND OF AT THE BACK. AND

10:53AM   16   YOU WILL SEE THAT THERE'S A DISK THERE, BECAUSE IT WAS

10:53AM   17   SOMETHING THAT WAS PRODUCED IN NATIVE AND MUCH EASIER TO WORK

10:53AM   18   WITH.

10:53AM   19   SO THIS IS AN ARISTA DOCUMENT THAT CONTAINS A COLLECTION OF

10:54AM   20   FEATURE REQUESTS FOR ARISTA PRODUCTS, INCLUDING TRACKING THE

10:54AM   21   CUSTOMER ASSOCIATED WITH THE FEATURE REQUEST, RIGHT?

10:54AM   22   A.   CORRECT.

10:54AM   23   Q.   OKAY. SO AND THIS WAS SOMETHING THAT I BELIEVE WAS

10:54AM   24   PREPARED AT ARISTA, CORRECT?

10:54AM   25   A.   YES.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:54AM 1   Q.   AND SO I MOVE EXHIBIT 3623, INCLUDING THE NATIVE VERSION

10:54AM 2   INTO EVIDENCE, YOUR HONOR?

10:54AM 3   MR. FERRALL: NO OBJECTION.

10:54AM 4   THE COURT: IT WILL BE ADMITTED.

10:54AM 5   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 3623, HAVING BEEN

10:54AM 6   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

10:54AM 7   EVIDENCE.)

10:54AM 8   BY MR. NELSON:

10:54AM 9   Q.   SO I WOULD LIKE TO LOOK AT A FEW THINGS HERE. CAN WE LOOK

10:54AM 10   AT ROW 3388, EXCUSE ME, I ADDED TOO MANY 3'S. 338, SORRY.

10:54AM 11   YOU WILL SEE IT SAYS, FEATURE AUTO PROVISIONING, RIGHT?

10:54AM 12   A.   THAT'S CORRECT.

10:54AM 13   Q.   AND I THINK YOU'RE LISTED AS THE ARISTA CONTACT FOR THAT?

10:54AM 14   A.   YES.

10:54AM 15   Q.   AND IF WE LOOK IN THE COMMENT SECTION, IT SAYS EBAY WANTS

10:55AM 16   THE SW IMAGE AND CONFIG TO BE LOADED BASED ON A CENTRAL

10:55AM 17   MAPPING. THEY LIKE CISCO'S AUTO-PROVISIONS THROUGH DHCP,

10:55AM 18   RIGHT?

10:55AM 19   A.   RIGHT.

10:55AM 20   Q.   OKAY. SO THAT'S SAYING CUSTOMER WANTS CISCO, AND THAT'S

10:55AM 21   SOMETHING YOU ARE GOING TO PUT INTO THE ARISTA PRODUCT,

10:55AM 22   CORRECT?

10:55AM 23   A.   THE CUSTOMER WANTED AUTO PROVISIONING AND THEY REFERRED TO

10:55AM 24   THE CISCO FEATURE THAT THEY ALREADY LIKED.

10:55AM 25   Q.   AND AUTO PROVISIONING, THAT'S NOT A CLI FEATURE, IS IT?

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:55AM 1   A.   NO.

10:55AM 2   Q.   OKAY. NOW LET'S GO TO LINE 354. I'M REMINDED THAT I

10:55AM 3   MISSED THE LAST COLUMN THERE. SO IF WE GO BACK TO 338, I

10:56AM 4   APOLOGIZE. YOU SEE THE STATUS THERE IS ZTP IN EOS 4.7.0, DO

10:56AM 5   YOU SEE THAT?

10:56AM 6   A.   YES.

10:56AM 7   Q.   WHAT'S ZTP?

10:56AM 8   A.   ZERO TOUCH PROVISIONING.

10:56AM 9   Q.   AND THAT'S -- WAS GOING TO BE ADDED IN EOS 4.7.0, CORRECT?

10:56AM 10   A.   CORRECT.

10:56AM 11   Q.   SO NOW I WOULD LIKE TO GO TO 354, LINE 354. AND HERE THE

10:56AM 12   TITLE OF THE FEATURE IS BGP ADVERTISEMENT INTERVAL.

10:56AM 13   DO YOU SEE THAT?

10:56AM 14   A.   YES.

10:56AM 15   Q.   AND YOU KNOW WHAT THAT IS?

10:56AM 16   A.   YES.

10:56AM 17   Q.   AND WHAT IS THAT?

10:56AM 18   A.   THIS IS THE WAY YOU CONFIGURE AT WHAT INTERVAL YOU SEND BGP

10:56AM 19   ADVERTISEMENTS TO YOUR NEIGHBOR.

10:56AM 20   Q.   OKAY. AND IF WE LOOK OVER IN THE COMMENTS SECTION, THE

10:57AM 21   REFERENCE IS TO THE CISCO WEBSITE, CORRECT?

10:57AM 22   A.   THAT'S A REFERENCE TO THE CISCO DOCUMENT, YES.

10:57AM 23   Q.   CISCO DOCUMENT ON THE CISCO WEBSITE?

10:57AM 24   A.   YES.

10:57AM 25   Q.   NOW IF WE GO DOWN TO 415, ROW 415, AND YOU WILL SEE THIS

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:57AM   1   FEATURE IS DISTRIBUTE LIST FOR OSPF BGP.

10:57AM   2   DO YOU SEE THAT?

10:57AM   3   A.   YES.

10:57AM   4   Q.   SO THAT'S ANOTHER FEATURE FOR THE PRODUCT?

10:57AM   5   A.   YES.

10:57AM   6   Q.   AND AGAIN, IF I LOOK OVER IN THE COMMENTS SECTION, THAT'S

10:57AM   7   THE REFERENCE FOR THAT IS A CISCO DOCUMENT ON A CISCO WEBSITE?

10:57AM   8   A.   YES.

10:57AM   9   Q.   NOW GO DOWN TO 418. AND YOU SEE DR REGISTER LIMIT.

10:57AM   10   DO YOU SEE THAT?

10:57AM   11   A.   YES.

10:57AM   12   Q.   AND THAT'S ANOTHER FEATURE TO BE ADDED TO THE PRODUCT; IS

10:58AM   13   THAT RIGHT?

10:58AM   14   A.   THAT'S CORRECT.

10:58AM   15   Q.   AND AGAIN THE REFERENCE IS TO A DOCUMENT ON THE CISCO

10:58AM   16   WEBSITE, CORRECT?

10:58AM   17   A.   RIGHT.

10:58AM   18   Q.   SO NOW LET'S GO TO ROW 650, AND YOU WILL SEE THE FEATURE TO

10:58AM   19   BE ADDED HERE IS RECURSIVE NEXT HOP; IS THAT RIGHT?

10:58AM   20   A.   THAT'S RIGHT.

10:58AM   21   Q.   THAT'S TO BE ADDED TO THE EOS PRODUCT OR THE ARISTA

10:58AM   22   PRODUCT, I SHOULD SAY?

10:58AM   23   A.   IT WAS A REQUESTED FEATURE, I DON'T KNOW THE STATUS, BUT

10:58AM   24   YES, IT WAS A REQUESTED FEATURE IN EOS.

10:58AM   25   Q.   AND THE NOTE THERE SAYS REPLICATE CISCO'S ABILITY TO HAVE A

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

10:58AM 1   NONLOCAL NEXT HOP IN A STATICKY ROUTE.

10:58AM 2   DO YOU SEE THAT?

10:58AM 3   A.   THAT'S WHAT THE ARISTA CONTACT PUT IN, YES.

10:58AM 4   Q.   SO THEN IF WE GO TO ROW 43, THE FEATURE ENTERED HERE IS

10:59AM 5   CISCO LIKE CLI PING BEHAVIOR.

10:59AM 6   DO YOU SEE THAT?

10:59AM 7   A.   YES.

10:59AM 8   Q.   AND THIS ONE I BELIEVE IT'S JUST MARKED DONE; IS THAT

10:59AM 9   CORRECT?

10:59AM 10   A.   THAT'S CORRECT.

10:59AM 11   Q.   NOW LET'S GO ON TO ROW 673. AND AGAIN HERE IS SAYS THE

10:59AM 12   FEATURES SHOW SNMP AND MIB.

10:59AM 13   DO YOU SEE THAT?

10:59AM 14   A.   YES.

10:59AM 15   Q.   AND IN THE COMMENT SECTION IT SAYS, ABILITY TO MIB WALK

10:59AM 16   FROM THE CLI CISCO COMPAT, BEING IMPLEMENTED FOR 4.7.

10:59AM 17   DO YOU SEE THAT?

10:59AM 18   A.   YES.

10:59AM 19   Q.   SO THAT INDICATES IMPLEMENTED IN 4.7?

11:00AM 20   A.   THAT'S WHAT THE COMMENTER THOUGHT. I DON'T KNOW IF IT WAS

11:00AM 21   4.7 OR 4.8 BUT SOMEWHERE IN THAT TIMEFRAME.

11:00AM 22   Q.   NOW LET'S GO TO ROW 161. AND THE FEATURE THERE IS RELOAD

11:00AM 23   IN XX MINUTES.

11:00AM 24   DO YOU SEE THAT?

11:00AM 25   A.   RIGHT.

921

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:00AM 1   Q.   THAT'S A FEATURE TO BE ADDED TO THE ARISTA PRODUCT?

11:00AM 2   A.   RIGHT.

11:00AM 3   Q.   AND THE NOTE THERE IS TO MIRROR CISCO CAPABILITY, WE CAN

11:00AM 4   CURRENTLY DO THIS WITH BASH SHUTDOWN, BUT THEY WANT TO AVOID

11:00AM 5   USING BASH.

11:00AM 6   DO YOU SEE THAT?

11:00AM 7   A.   YES.

11:00AM 8   Q.   AND THE STATUS THERE IS MARKED DONE; IS THAT CORRECT?

11:00AM 9   A.   THAT'S RIGHT.

11:00AM 10   Q.   AND THEN IF I GO TO SHOW 664, YOU WILL SEE IT SAYS SH, INT

11:01AM 11   TRUNK COMMAND; IS THAT RIGHT?

11:01AM 12   A.   THAT'S RIGHT.

11:01AM 13   Q.   AND THAT WAS A FEATURE TO BE ADDED TO THE PRODUCT?

11:01AM 14   A.   THAT WAS REQUESTED BY THE CUSTOMER, YES.

11:01AM 15   Q.   AND THE NOTE THERE IS TO MIMIC CISCO, RIGHT?

11:01AM 16   A.   YES.

11:01AM 17   Q.   NOW, SIR, DO YOU KNOW WHETHER THERE WAS ANY ATTEMPT TO

11:01AM 18   DETERMINE WHETHER CISCO HAD INTELLECTUAL PROPERTY THAT COVERED

11:01AM 19   ANY OF THESE FEATURES THAT ARE LISTED?

11:01AM 20   A.   THERE WAS NO STUDY, BUT THE FEATURE REQUEST HERE IS A

11:01AM 21   FUNCTIONALITY THAT THE CUSTOMER WANTS. THIS WAS A FEATURE THAT

11:01AM 22   EVERYONE IN THE INDUSTRY WAS USING AND WE DIDN'T BELIEVE THIS

11:01AM 23   WAS PROTECTED IN ANY WAY.

11:01AM 24   Q.   BUT YOU DIDN'T DO A STUDY?

11:01AM 25   A.   NO.

922

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:01AM 1   Q.   YOU JUST DECIDED YOU DIDN'T BELIEVE IT WAS PROTECTED,

11:02AM 2   RIGHT?

11:02AM 3   A.   GIVEN THAT MANY OTHER COMPANIES ALREADY WERE USING THE SAME

11:02AM 4   FEATURES IN THE SAME CLI, YES, IT WAS OKAY TO USE.

11:02AM 5   Q.   YET EVERYONE WE WALKED THROUGH REFERENCED TO CISCO

11:02AM 6   DOCUMENTS OR CISCO CAPABILITY, NOT TO OTHER COMPANIES, RIGHT?

11:02AM 7   A.   THAT'S WHAT THE CUSTOMERS ASKED FOR BECAUSE THESE PEOPLE

11:02AM 8   KNEW CISCO PRODUCTS.

11:02AM 9   Q.   AND IT DIDN'T SAY GO REFERENCE THE INDUSTRY STANDARD,

11:02AM 10   RIGHT?

11:02AM 11   A.   IT DIDN'T SAY THAT.

11:02AM 12   Q.   OKAY. SO NOW, LET ME MOVE TO ANOTHER DOCUMENT AND I WOULD

11:02AM 13   LIKE TO LOOK AT EXHIBIT 381 IN YOUR BINDER. NOW EXHIBIT 381 IS

11:02AM 14   A CISCO REQUIREMENTS PRODUCT DOCUMENT.

11:03AM 15   DO YOU RECOGNIZE THAT FROM YOUR DAYS AT CISCO?

11:03AM 16   A.   I RECOGNIZE THE DOCUMENT, YES.

11:03AM 17   Q.   AND THIS DOCUMENT WAS ACTUALLY A DOCUMENT THAT CAME FROM

11:03AM 18   YOUR FILES PRODUCED FOR THIS LITIGATION, RIGHT?

11:03AM 19   A.   THAT'S RIGHT.

11:03AM 20   Q.   AND YOU -- YOU'RE AWARE, SIR, THAT PRODUCTS REQUIREMENT

11:03AM 21   DOCUMENTS ARE CONFIDENTIAL TO CISCO, RIGHT?

11:03AM 22   A.   YES.

11:03AM 23   Q.   IN OTHER WORDS, THEY LAY OUT WHAT PEOPLE, YOU KNOW, THE

11:03AM 24   SPECIFICATIONS, WHAT THEY ARE GOING TO DO WITH THE FUTURE

11:03AM 25   PRODUCT, RIGHT?

923

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:03AM   1   A.   YES.

11:03AM   2   Q.   NOW THE DATE ON THIS DOCUMENT, SIR, IS JUNE 22ND, 2009,

11:03AM   3   RIGHT?

11:03AM   4   A.   THAT'S CORRECT.

11:03AM   5   Q.   SO THAT'S A COUPLE OF YEARS AFTER YOU LEFT CISCO, CORRECT?

11:03AM   6   A.   THAT'S CORRECT.

11:03AM   7   Q.   BUT YOU DON'T HAVE ANY FACTS TO EXPLAIN HOW THIS

11:03AM   8   CONFIDENTIAL CISCO PRODUCT REQUIREMENT DOCUMENT WAS -- CAME

11:03AM   9   INTO YOUR POSSESSION, RIGHT?

11:03AM   10   A.   NO, I DON'T.

11:04AM   11   Q.   AND IT WAS ON YOUR COMPUTER AT ARISTA, CORRECT?

11:04AM   12   A.   IT WAS ON OUR SHARED DRIVE AT ARISTA.

11:04AM   13   Q.   IT WAS ON A SHARED DRIVE AT ARISTA?

11:04AM   14   A.   IT WAS ON A GOOGLE DRIVE AT ARISTA.

11:04AM   15   Q.   IN OTHER WORDS, OTHER PEOPLE AT ARISTA COULD ACCESS IT TOO?

11:04AM   16   A.   NO, IT WAS IN MY NAME.

11:04AM   17   Q.   OKAY.

11:04AM   18   SO AT THIS POINT I AM REMINDED I DIDN'T MOVE THAT

11:04AM   19   INTO EVIDENCE.

11:04AM   20   MAY I MOVE THAT INTO EVIDENCE, YOUR HONOR? IT WOULD BE

11:04AM   21   EXHIBIT 381.

11:04AM   22   MR. FERRALL: NO OBJECTION.

11:04AM   23   THE COURT: IT WILL BE ADMITTED.

11:04AM   24   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 381, HAVING BEEN

11:04AM   25   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:04AM 1   EVIDENCE.)

11:04AM 2   BY MR. NELSON:

11:04AM 3   Q.   AND SIR, JUST SO WE -- THIS IS THE FRONT PAGE OF THE

11:04AM 4   DOCUMENT WE WERE TALKING ABOUT, CORRECT?

11:04AM 5   A.   THAT'S RIGHT.

11:04AM 6   Q.   ALL RIGHT.   THANK YOU.

11:04AM 7   SO I WANT TO MOVE NOW FORWARD TO ANOTHER DOCUMENT IN YOUR

11:04AM 8   BINDER WHICH IS EXHIBIT 383.   AND YOU SEE EXHIBIT 383 THERE,

11:05AM 9   SIR?

11:05AM 10   A.   YES.

11:05AM 11   Q.   NOW, EXHIBIT 383 IS A CISCO NEXT US 700 SERIES SWITCH,

11:05AM 12   NX-OS AND DCNM ROAD MAP, RIGHT?

11:05AM 13   A.   RIGHT.

11:05AM 14   Q.   AND YOU RECOGNIZE THIS DOCUMENT PRODUCT AS A ROAD MAP?

11:05AM 15   A.   YES.

11:05AM 16   Q.   AND THE DOCUMENT SAYS, CISCO HIGHLY CONFIDENTIAL CONTROLLED

11:05AM 17   ACCESS, DO YOU SEE THAT?

11:05AM 18   A.   YES.

11:05AM 19   MR. NELSON: YOUR HONOR --

11:05AM 20   Q.   AND I SHOULD ASK YOU, THIS IS ANOTHER DOCUMENT THAT WHAT

11:05AM 21   CAME FROM YOU, PRODUCED IN THIS LITIGATION?

11:05AM 22   A.   THAT'S CORRECT.

11:05AM 23   MR. NELSON: YOUR HONOR, AT THIS POINT I WOULD LIKE

11:05AM 24   TO MOVE EXHIBIT 383 INTO EVIDENCE.

11:05AM 25   MR. FERRALL: NO OBJECTION.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:05AM 1   THE COURT: IT WILL BE ADMITTED.

11:05AM 2   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 383, HAVING BEEN

11:05AM 3   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

11:05AM 4   EVIDENCE.)

11:05AM 5   BY MR. NELSON:

11:05AM 6   Q.   NOW THE DATE ON THIS DOCUMENT, AT LEAST THIS PARTICULAR ONE

11:06AM 7   SAYS UPDATED MARCH 4, 2011.

11:06AM 8   DO YOU SEE THAT?

11:06AM 9   A.   YES.

11:06AM 10   Q.   NOW AGAIN, YOU LEFT IN 2007, CORRECT?

11:06AM 11   A.   THAT'S RIGHT.

11:06AM 12   Q.   AND YOU AGREE THAT PRODUCT ROAD MAPS ARE HIGHLY

11:06AM 13   CONFIDENTIAL INFORMATION TO CISCO, CORRECT?

11:06AM 14   A.   CORRECT.

11:06AM 15   Q.   AND YOU DON'T HAVE ANY FACTS, ANY EXPLANATION FOR HOW THIS

11:06AM 16   DOCUMENT ENDED UP IN YOUR SYSTEM AT ARISTA, CORRECT?

11:06AM 17   A.   THAT'S RIGHT.

11:06AM 18   Q.   ALL RIGHT, SIR, I WOULD LIKE YOU TO TURN TO EXHIBIT 404 IN

11:06AM 19   YOUR BINDER. AND THIS DOCUMENT IS AN E-MAIL FROM MR. MARK FOSS

11:07AM 20   TO YOURSELF FORWARDING AN E-MAIL EXCHANGE THAT MR. FOSS HAD

11:07AM 21   WITH SOME FOLKS AT FACEBOOK, CORRECT?

11:07AM 22   A.   THAT'S CORRECT.

11:07AM 23   Q.   AND THE DATE IS JANUARY 15, 2009?

11:07AM 24   A.   THAT'S RIGHT.

11:07AM 25   MR. NELSON: AT THIS POINT I MOVE EXHIBIT 404 INTO

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:07AM 1   EVIDENCE, YOUR HONOR.

11:07AM 2   THE COURT: ANY OBJECTION?

11:07AM 3   MR. FERRALL: NO OBJECTION.

11:07AM 4   THE COURT: IT WILL BE ADMITTED.

11:07AM 5   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 404, HAVING BEEN

11:07AM 6   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

11:07AM 7   EVIDENCE.)

11:07AM 8   BY MR. NELSON:

11:07AM 9   Q.   SO LET'S LOOK AT MIDDLE OF THE PAGE. SO MR. FOSS FIRST,

11:07AM 10   CAN YOU TELL US WHO MR. FOSS IS?

11:07AM 11   A.   AT THAT TIME MARK FOSS WAS RESPONSIBLE FOR PARTNER OR

11:07AM 12   CHANNEL PROGRAMS AT ARISTA.

11:07AM 13   Q.   PARTNER CHANNEL PROGRAMS?

11:07AM 14   A.   CHANNEL PROGRAMS, YES.

11:07AM 15   Q.   SO IF YOU LOOK AT THE MIDDLE OF THE E-MAIL THE ONE THAT'S

11:08AM 16   FROM MR. FOSS TO THE PEOPLE AT FACEBOOK.

11:08AM 17   DO YOU SEE THAT?

11:08AM 18   A.   YES.

11:08AM 19   Q.   IT SAYS, AS I MENTIONED TO DAN LAST NIGHT, THE CLI COMMANDS

11:08AM 20   IN OUR SWITCH ARE IDENTICAL TO CISCO IOS SO THERE SHOULD BE NO

11:08AM 21   LEARNING CURVE TO GET IT CONFIGURED.

11:08AM 22   DO YOU SEE THAT?

11:08AM 23   A.   YES.

11:08AM 24   Q.   SO THAT'S SOMETHING THAT ARISTA SALES ENGINEERS WERE OUT

11:08AM 25   TELLING CUSTOMERS IS A SELLING POINT OF THE ARISTA SWITCH,

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:08AM 1   CORRECT?

11:08AM 2   A.   WE WERE SAYING THAT TO CUSTOMERS, YES.

11:08AM 3   Q.   RIGHT. WE'RE IDENTICAL TO CISCO IOS SO YOU WON'T HAVE ANY

11:08AM 4   LEARNING CURVE TO USE OUR PRODUCT, CORRECT?

11:08AM 5   A.   THAT'S RIGHT.

11:08AM 6   Q.   SO EXHIBIT 379, AND LET ME KNOW WHEN YOU ARE THERE. ARE

11:09AM 7   YOU THERE, SIR?

11:09AM 8   A.   YES.

11:09AM 9   Q.   SO THE TOP E-MAIL IS FROM MR. ADAM SWEENEY TO MR. SUNEEL

11:09AM 10   VENATI, DID I GET THAT NAME RIGHT?

11:09AM 11   A.   THAT'S RIGHT.

11:09AM 12   Q.   AND YOU ARE ONE OF THE COPIES ON THAT E-MAIL, CORRECT?

11:09AM 13   A.   CORRECT.

11:09AM 14   Q.   AND THE SUBJECT OF THAT IS QOS, CLI; IS THAT RIGHT?

11:09AM 15   A.   THAT'S RIGHT.

11:09AM 16   Q.   AND QS, THAT STANDS FOR QUALITY OF SERVICE?

11:09AM 17   A.   YES.

11:09AM 18   Q.   NOW, THAT TOP LEVEL E-MAIL ATTACHES ANOTHER E-MAIL FROM

11:09AM 19   MR. VENATI; IS THAT RIGHT? IN OTHER WORDS IF YOU FOLLOW THE

11:09AM 20   STRING DOWN YOU WILL SEE ANOTHER E-MAIL FROM MR. VENATI DATED

11:09AM 21   MONDAY PRINCIPAL 18TH 2011?

11:09AM 22   A.   YES.

11:09AM 23   Q.   AND THE --

11:10AM 24   MR. NELSON: WELL AT THIS POINT, YOUR HONOR, I MOVE

11:10AM 25   INTO EVIDENCE EXHIBIT 379.

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:10AM 1   THE COURT: ANY OBJECTION?

11:10AM 2   MR. FERRALL: NO OBJECTION.

11:10AM 3   THE COURT: IT WILL BE ADMITTED.

11:10AM 4   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 379, HAVING BEEN

11:10AM 5   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

11:10AM 6   EVIDENCE.)

11:10AM 7   BY MR. NELSON:

11:10AM 8   Q.   NOW IF I GO DOWN TO MR. VENATI'S E-MAIL, YOU WILL SEE IT

11:10AM 9   SAYS, I'M TRYING TO UNDERSTAND WHAT CLI'S WE WOULD LIKE TO

11:10AM 10 SUPPORT FOR QOS.

11:10AM 11   DO YOU SEE THAT?

11:10AM 12 A.   YES.

11:10AM 13 Q.   DO WE GO WITH CISCO MQC KIND OF CLI OR WITH A SIMPLE CLI.

11:10AM 14 MQC SEEMS OVERKILL AT THIS POINT BUT EVENTUALLY WE MAY WANT TO

11:10AM 15 GET THERE. ARE THERE ANY COPYRIGHT ISSUES IF WE WANT TO USE

11:10AM 16 MQC?

11:10AM 17   DO YOU SEE THAT?

11:10AM 18 A.   YES.

11:10AM 19 Q.   AND MQC, THAT WAS REFERRING TO THE CISCO MQC CLI, CORRECT?

11:10AM 20 A.   YES.

11:10AM 21 Q.   AND MQC STANDS FOR MODULAR QUALITY SERVICE; IS THAT RIGHT?

11:11AM 22 A.   YES.

11:11AM 23 Q.   SO THAT'S SOMETHING CISCO OFFERS IN ITS CLI, CORRECT?

11:11AM 24 A.   ON SOME PRODUCTS, YES.

11:11AM 25 Q.   AND MR. VENATI WAS ASKING, ARE THERE ANY COPYRIGHT ISSUES

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:11AM 1   IF WE WANT TO USE MQC, IN OTHER WORDS THAT MQC RELATED CLI,

11:11AM 2   CORRECT?

11:11AM 3   A.   CORRECT.

11:11AM 4   Q.   NOW YOU ARE NOT AWARE THAT ANYBODY GOT BACK TO MR. VENATI

11:11AM 5   WITH RESPECT TO THAT QUESTION, RIGHT?

11:11AM 6   A.   I'M NOT AWARE.

11:11AM 7   Q.   SO AS FAR AS YOU KNOW NOBODY EVER ANSWERED THAT QUESTION,

11:11AM 8   CORRECT?

11:11AM 9   A.   THAT'S CORRECT.

11:11AM 10   Q.   AND AS FAR AS YOU KNOW NOBODY EVER DID AN INVESTIGATION

11:11AM 11   INTO THAT, CORRECT?

11:11AM 12   A.   THAT'S CORRECT.

11:11AM 13   Q.   NOW ONE MORE, AND THIS ONE IS EXHIBIT 842. THE E-MAIL HERE

11:12AM 14   AT THE TOP LEVEL IS FROM MR. VENATI TO MR. WHITNEY WITH A

11:12AM 15   NUMBER OF CC'S INCLUDING YOURSELF; IS THAT CORRECT?

11:12AM 16   A.   THAT'S CORRECT.

11:12AM 17   Q.   AND THE DATE ON THIS IS MARCH 4TH, 2014?

11:12AM 18   A.   THAT'S CORRECT.

11:12AM 19   Q.   I MOVE INTO EVIDENCE EXHIBIT 842, YOUR HONOR?

11:12AM 20   THE COURT: ANY OBJECTION?

11:12AM 21   MR. FERRALL: NO OBJECTION.

11:12AM 22   THE COURT: IT WILL BE ADMITTED.

11:12AM 23   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 842, HAVING BEEN

11:12AM 24   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

11:12AM 25   EVIDENCE.)

DIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:12AM 1   BY MR. NELSON:

11:12AM 2   Q.   SO IF I LOOK AT THE TOP LEVEL, THIS E-MAIL STRING TALKS

11:12AM 3   ABOUT SYNTAX FOR PORT PROFILE CLI AND IMPLEMENT THE IT WITHIN

11:12AM 4   QOS CLI PLUG IN, CORRECT?

11:13AM 5   A.   THAT'S CORRECT.

11:13AM 6   Q.   AND THERE'S A SERIES OF OTHER EXCHANGES, BUT IF I GO DOWN

11:13AM 7   TO AN E-MAIL FROM MR. WHITNEY, THAT'S ON THE SECOND PAGE AND

11:13AM 8   THIS ONE IS DATED MARCH 3RD, 2014, -- ACTUALLY, BEFORE I GO

11:13AM 9   THERE LET ME GO TO THE EARLIER ONE.

11:13AM 10   SO IF I GO TO MARCH 3RD, 2014, BUT THE ONE THAT'S AT

11:13AM 11   4:03 P.M., YOU WILL SEE AN E-MAIL FROM MR. WHITNEY THAT SAYS

11:13AM 12   MAYBE SOMETHING ALONG THE LINES OF JUNOS CONFIGURATION GROUPS

11:13AM 13   BUT IN IOS HIERARCHY.

11:13AM 14   DO YOU SEE THAT?

11:13AM 15   A.   YES.

11:13AM 16   Q.   AND THEN YOU RESPOND SAYING YOU HAVEN'T STOPPED SELLING

11:13AM 17   JUNOS, HAVE YOU? RIGHT?

11:14AM 18   A.   THAT'S CORRECT.

11:14AM 19   Q.   AND THEN IF WE GO FORWARD TO MR. WHITNEY'S RESPONSE, THAT'S

11:14AM 20   MARCH 3RD, HE SAYS, IT HAS SOME GOOD POINTS, WITH THE WINK

11:14AM 21   AGAIN. WE COPY CISCO FOR EVERYTHING ELSE. RIGHT?

11:14AM 22   A.   THAT'S RIGHT.

11:14AM 23   Q.   SO MR. WHITNEY WAS TELLING YOU, MAYBE USE JUNO BUT WE COPY

11:14AM 24   CISCO FOR EVERYTHING ELSE, CORRECT?

11:14AM 25   A.   IN THE CONTEXT OF THE CLI, THAT'S WHAT HE'S SAYING.

11:14AM 1   MR. NELSON: ALL RIGHT. THANK YOU, SIR.

11:14AM 2   I HAVE NO FURTHER QUESTIONS FOR YOU AT THIS POINT. AND I

11:14AM 3 WILL PASS THE WITNESS, YOUR HONOR.

11:14AM 4   THE COURT: THANK YOU.

11:14AM 5   MR. SILBERT, CROSS-EXAMINATION?

11:14AM 6   MR. FERRALL: ACTUALLY, MR. FERRALL.

11:14AM 7   THE COURT: OH. MR. FERRALL. SORRY.

11:15AM 8

11:15AM 9   **CROSS-EXAMINATION BY MR. FERRALL**

11:15AM 10

11:15AM 11 BY MR. FERRALL:

11:15AM 12 Q.   GOOD MORNING, MR. SADANA.

11:15AM 13 A.   GOOD MORNING.

11:15AM 14 Q.   DO YOU HAVE A LITTLE WATER THERE?

11:15AM 15 A.   YES.

11:15AM 16 Q.   OKAY. BEFORE WE GET STARTED, MR. SADANA, I WANT TO START

11:15AM 17 WITH FOLLOWING UP ON SOME OF THE EARLY QUESTIONS THAT

11:15AM 18 MR. NELSON POSED REGARDING THE EARLY YEARS OF THE SWITCH AT

11:15AM 19 ARISTA WHEN YOU GOT THERE.

11:16AM 20   I THINK YOU TESTIFIED ALONG THE LINES THAT THE ARISTA

11:16AM 21 SWITCH AS OF 2007 HAD JUST A FEW FEATURES, CAN YOU EXPLAIN THAT

11:16AM 22 A LITTLE BIT MORE?

11:16AM 23 A.   SURE. IN 2007 WHEN I JOINED IN THE JULY TIMEFRAME, THE

11:16AM 24 PRODUCT HAD VERY FEW FEATURES, IT WAS VERY EARLY ON, JUST

11:16AM 25 ENOUGH TO DO A LITTLE BIT OF PACKET FORWARDING. AND THAT IT

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:16AM 1   WAS, THAT VERY ONE PRODUCT WE HAD AND WE HAD STARTED IT FOR THE

11:16AM 2   TESTING, THAT WAS THE CONTEXT OF THE DISCUSSION.

11:16AM 3   Q.   AND APPROXIMATELY HOW MANY CLI COMMANDS DID THE ARISTA EOS

11:16AM 4   HAVE AT THAT TIME?

11:16AM 5   A.   PROBABLY 10 OR 20.

11:16AM 6   Q.   AND THOSE WERE IOS-LIKE, I TAKE IT?

11:16AM 7   A.   AT THAT TIME, THE COMMAND LINE WAS IOS-LIKE, YES.

11:17AM 8   Q.   OKAY. I NEXT WANT TO MOVE TO THE DOCUMENT THAT WAS JUST

11:17AM 9   MARKED AS -- FOR REFRESHING YOUR RECOLLECTION REGARDING

11:17AM 10 ARISTA'S R&D EXPENSE?

11:17AM 11 A.   YES.

11:17AM 12 Q.   AND IF YOU DON'T NEED TO REFER TO IT, YOU DON'T HAVE TO.

11:17AM 13 BUT WHAT I WOULD LIKE YOU TO DO IS TO TELL THE JURY ABOUT HOW

11:17AM 14 MUCH ARISTA HAS SPENT IN R&D, SINCE 2007.

11:17AM 15   MR. NELSON TOOK YOU TO 2007, CAN YOU TELL THE JURY HOW MUCH

11:17AM 16 YOU SPENT AFTER THAT?

11:17AM 17 A.   WELL, AS THE DOCUMENT SHOWS, UP UNTIL 2014, CUMULATIVE WE

11:17AM 18 HAD SPENT 376 MILLION IN R&D.

11:17AM 19   AND TODAY ARISTA HAS ONE OF THE HIGHEST R&D SPENT IN THE

11:17AM 20 INDUSTRY AS A PERCENTAGE OF REVENUE.

11:18AM 21 Q.   CAN YOU TELL ME ABOUT WHAT THAT IS?

11:18AM 22 A.   TODAY WE ARE ROUGHLY 20 TO 22 PERCENT OF OUR REVENUE IN

11:18AM 23 R&D, WHEREAS IN THE NETWORKING, MOST COMPANIES SPEND 13 TO

11:18AM 24 15 PERCENT OF THEIR REVENUE IN R&D. SO WE HAVE A SIGNIFICANTLY

11:18AM 25 LARGER INVESTMENT IN RESEARCH AND DEVELOPMENT COMPARED TO THE

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:18AM 1   INDUSTRY.

11:18AM 2   Q.   OKAY.   SHIFTING TO ANOTHER TOPIC.

11:18AM 3   DID YOU EVER BELIEVE, MR. SADANA, THAT THERE WAS ANYTHING

11:18AM 4   WRONG WITH ARISTA USING SOME OF THE SAME CLI COMMAND LANGUAGE

11:18AM 5   AS IOS?

11:18AM 6   A.   NO, I DID NOT.

11:18AM 7   Q.   DID YOU EVER TRY TO HIDE FROM THE PUBLIC THE FACT THAT

11:18AM 8   ARISTA USES SOME OF THE SAME CLI COMMAND LANGUAGE AS IOS?

11:18AM 9   A.   NO, WE DID NOT HIDE IT.   WE WERE QUITE OPEN ABOUT IT.

11:19AM 10   Q.   LET'S LOOK AT SOME OF THE DOCUMENTS THAT MR. NELSON

11:19AM 11   INTRODUCED THROUGH YOU.   AND I'M GOING TO START WITH ONE OF THE

11:19AM 12   LAST ONES AND KIND OF GO BACKWARDS.

11:19AM 13   IF YOU COULD LOOK AT EXHIBIT 842, PLEASE.   MR. NELSON HAD

11:19AM 14   DIRECTED YOU TO A COMMENT FROM A MR. WHITNEY ON THE SECOND

11:19AM 15   PAGE.   IF WE COULD LOOK AT THAT.   IT'S THE COMMENT AT THE TIME,

11:19AM 16   MARCH 3RD, 2014, AT 6:47 P.M.

11:19AM 17   MR. SADANA, WHAT DID YOU UNDERSTAND MR. WHITNEY TO BE

11:19AM 18   REFERRING TO HERE?

11:19AM 19   A.   MR. WHITNEY CAME TO ARISTA FROM JUNIPER, SO HE HAD JUNOS

11:20AM 20   BACKGROUND.   HE'S REFERRING TO A PARTICULAR WAY OF CONFIGURING

11:20AM 21   QOS FEATURES IN JUNOS.

11:20AM 22   Q.   AND THE SUBJECT LINE OF THIS -- STRIKE THAT.   WHAT WAS --

11:20AM 23   WHAT WAS MR. WHITNEY REFERRING TO, BASED UPON YOUR

11:20AM 24   UNDERSTANDING, WHEN HE REFERS TO COPYING CISCO?

11:20AM 25   A.   HE WAS REFERRING TO THE CLI COMMANDS.

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:20AM 1   Q.   OKAY. AND IF WE COULD LOOK AT THE FRONT PAGE OF THIS

11:20AM 2   EXHIBIT, AND IF WE COULD JUST BLOW UP THE HEADER WITH THE

11:20AM 3   SUBJECT LINE.

11:20AM 4   CAN YOU TELL ME WHAT THE SUBJECT OF THIS E-MAIL EXCHANGE

11:20AM 5   IS? IN SIMPLE TERMS, IF POSSIBLE, PLEASE.

11:20AM 6   A.   SURE. THIS IS A REQUEST FOR A FEATURE ENHANCEMENT, RFEE

11:21AM 7   BY SOMEONE IN THIS E-MAIL CHAIN REQUESTING AN MQC OR MODULAR

11:21AM 8   QOS-LIKE CLI.

11:21AM 9   Q.   OKAY. AND NOW I WOULD LIKE YOU TO TURN TO EXHIBIT 379. IF

11:21AM 10 WE COULD CALL THAT UP, AND IN PARTICULAR HIGHLIGHT THE BOTTOM

11:21AM 11 PART, THE MESSAGE DATED 2:20 A.M.

11:21AM 12 A.   MR. SUNEEL WORKS IN THE BANGALORE OFFICE.

11:21AM 13 Q.   SO THIS -- CAN YOU TELL ME WHAT THE SUBJECT, AGAIN, IN

11:21AM 14 SIMPLE TERMS, IF POSSIBLE, WHAT THE SUBJECT OF THIS

11:21AM 15 CONVERSATION WAS?

11:22AM 16 A.   MR. SUNEEL WAS IMPLEMENTING OUR QOS FEATURES AT THAT POINT,

11:22AM 17 AND HE WAS ASKING FOR INPUT ON WHAT CLI TO USE, WHETHER TO USE

11:22AM 18 SIMPLE CLI OR MODULAR QOS CLI.

11:22AM 19 Q.   AND WHAT DID ARISTA END UP USING, DID IT USE THE CISCO MQC

11:22AM 20 KIND?

11:22AM 21 A.   NO, WE DID NOT IMPLEMENT THE MQC CLI, WE STAYED WITH THE

11:22AM 22 SIMPLE CLI.

11:22AM 23 Q.   AND IN YOUR MIND, WERE THERE ANY COPYRIGHT ISSUES WITH THE

11:22AM 24 SIMPLE CLI OR THE CLI THAT ARISTA IMPLEMENTED?

11:22AM 25 A.   NO, WE BELIEVED THIS WAS THE INDUSTRY STANDARD, EVERYONE

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:22AM 1   WAS USING IT, WE WERE USING THE SAME CLI.

11:22AM 2   Q.   LET'S TURN NEXT TO EXHIBIT 197. AND YOU RECALL MR. NELSON

11:23AM 3   ASKED YOU QUITE A FEW QUESTIONS ABOUT THIS EXHIBIT?

11:23AM 4   A.   YES.

11:23AM 5   Q.   AND I THINK YOU SAID IN YOUR TESTIMONY, YOU REFERRED TO

11:23AM 6   SOMETHING CALLED ACLS; IS THAT RIGHT?

11:23AM 7   A.   THAT'S RIGHT.

11:23AM 8   Q.   AND IN PARTICULAR, ACL CONFIGURATION, I THINK?

11:23AM 9   A.   YES.

11:23AM 10   Q.   WE WON'T NEED TO GO INTO THE DETAILS OF WHAT THOSE ARE, BUT

11:23AM 11   CAN YOU TELL THE JURY WHAT THE OUTCOME WAS OF THIS DISCUSSION

11:23AM 12   REGARDING THE ACL CONFIGURATION THAT ARISTA WOULD USE?

11:23AM 13   A.   RIGHT. THIS E-MAIL CHAIN WAS ONLY PART OF THE DISCUSSION.

11:23AM 14   WE WERE A SMALL COMPANY, SO WE HAD A MEETING TO GO OVER WHAT

11:23AM 15   CLI TO USE.

11:23AM 16   AND AT THAT POINT, JUNIPER ACTUALLY HAD A BETTER WAY OF

11:23AM 17   CONFIGURING ACL A FEATURE CALLED ACL COMMIT. SO THAT IF YOU

11:24AM 18   ARE MAKING CHANGES TO THE NETWORK, YOU CANNOT OPEN A SECURITY

11:24AM 19   HOLE WHILE YOU ARE MAKING THE CHANGE.

11:24AM 20   AND THEN AFTER THAT DISCUSSION, WE ACTUALLY ENDED UP DOING

11:24AM 21   WHAT JUNIPER HAD ALREADY IMPLEMENTED AND WHAT WAS ORIGINALLY

11:24AM 22   ASKED FROM EOS. WE ACTUALLY DID NOT END UP WITH CISCO CLI FOR

11:24AM 23   THAT FUNCTIONALITY.

11:24AM 24   Q.   AND HOW, IN YOUR VIEW, WAS THAT IMPLEMENTATION DIFFERENT

11:24AM 25   FROM CISCO IN TERMS OF ITS PERFORMANCE FOR THE USER?

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:24AM 1   A.   THE CISCO IMPLEMENTATION AT THAT TIME, AND IOS ESPECIALLY,

11:24AM 2   WHAT I RECALL, IF YOU HAD TO MAKE CHANGES TO ACL WHICH REFERS

11:24AM 3   TO A SECURITY FEATURE OR THE NETWORK, THAT IT WAS A

11:24AM 4   LINE-BY-LINE CONFIGURATION. SO AS YOU ARE MAKING THE CHANGE ON

11:24AM 5   WHICH IP ADDRESSES YOU WANT TO PERMIT, WHICH IP ADDRESSES YOU

11:24AM 6   WANT TO DENY, THE NETWORK WOULD SHOW THAT CHANGE.

11:25AM 7   AND WHILE YOU ARE MAKING THAT CHANGE, THE NETWORK IS

11:25AM 8   EXPOSED TO AN ATTACK. WHEREAS, IN THE WAY WE ENDED UP

11:25AM 9   IMPLEMENTING, IT'S AN ECONOMIC OR A BINARY OPERATION WHERE YOU

11:25AM 10   GO FROM ONE CONFIGURATION TO THE NEXT. SO THE USER HAS PLENTY

11:25AM 11   OF TIME TO CONFIGURE THE ACL FUNCTIONALITY, AND THEN WHEN THEY

11:25AM 12   ARE DONE THEY TYPE COMMIT. THEN THE CHANGE GETS APPLIED TO THE

11:25AM 13   PRODUCT.

11:25AM 14   Q.   SO THERE WERE SOME OTHER QUESTIONS ABOUT THIS DOCUMENT.

11:25AM 15   LET'S LOOK AT THE SECOND PAGE, THE TOP PARAGRAPH ON THE SECOND

11:25AM 16   PAGE.

11:25AM 17   CAN YOU -- YOU TESTIFIED ABOUT DIFFERENT VERTICALS, DO YOU

11:26AM 18   REMEMBER THAT?

11:26AM 19   A.   YES.

11:26AM 20   Q.   AND CAN YOU EXPLAIN TO THE JURY WHAT YOU MEAN BY A

11:26AM 21   VERTICAL.

11:26AM 22   A.   INTERNET SWITCHING IS A VERY LARGE MARKET, AND IN ORDER TO

11:26AM 23   CATER TO OUR CUSTOMERS, WE DIVIDED IT INTO DIFFERENT GROUPS

11:26AM 24   THEN WORK ON THE FEATURES, PRODUCT ATTRIBUTES FOR THAT GROUP.

11:26AM 25   AND EACH GROUP IS ESSENTIALLY A VERTICAL OF THIS ENTIRE MARKET.

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:26AM 1   SO ENTERPRISES IS A VERTICAL, HIGH PERFORMANCE COMPUTING IS

11:26AM 2   A VERTICAL, CLOUD COMPANIES IS A VERTICAL, AS AN EXAMPLE.

11:26AM 3   Q.   AND I'M SORRY, I PULLED UP THE WRONG EXCERPT FOR THIS LINE

11:26AM 4   OF QUESTIONING. SO IF WE COULD PULL UP THE EXCERPT FROM THE

11:26AM 5   BOTTOM OF THE FIRST PAGE OF THIS EXHIBIT.

11:27AM 6   BECAUSE YOUR TESTIMONY REGARDING VERTICALS WAS IN THE

11:27AM 7   CONTEXT OF JUNOS VERSUS CISCO, CORRECT?

11:27AM 8   A.   THAT'S CORRECT.

11:27AM 9   Q.   OKAY. AND CAN YOU EXPLAIN TO ME WHAT THE VERTICAL IS THAT

11:27AM 10 JUNOS WAS MOST POPULAR IN?

11:27AM 11 A.   JUNIPER WAS SETTING ROUTERS TO THE MARKET AT THAT POINT,

11:27AM 12 THEY WERE NOT SUCCESSFUL IN SWITCHING. AND THE ROUTERS WERE

11:27AM 13 BEING CONSUMED LARGELY BY SERVICE PROVIDERS LIKE AT&T AND

11:27AM 14 VERIZON.

11:27AM 15   SO JUNIPER WAS STRONG IN ROUTING IN THAT VERTICAL, WHEREAS

11:27AM 16 PRETTY MUCH EVERYTHING ELSE, THE USER COMMUNITY WAS FAMILIAR

11:27AM 17 WITH CISCO BECAUSE THOSE WERE THE SWITCHES THEY WERE USING.

11:27AM 18 Q.   AND AT THIS TIME, WHAT WAS ARISTA'S TARGET VERTICAL OR

11:27AM 19 VERTICALS?

11:27AM 20 A.   THIS IS EARLY ON IN THE COMPANY, OUR AMBITION WAS TO GO

11:27AM 21 AFTER THE ENTIRE MARKET. AND AT THE SAME TIME EARLY ON, WE

11:28AM 22 WERE MORE FOCUSED ON HIGH PERFORMANCE COMPUTING, AND ACTUALLY

11:28AM 23 CREATING AND ACCESS TO GO AFTER THE CLOUD COMPANIES. BUT IN

11:28AM 24 THE LONGER TERM PLAN, WE STILL WANTED TO GO AFTER THE LARGE

11:28AM 25 ENTERPRISES.

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:28AM 1   Q.   WERE YOU GOING AFTER THE SERVICE PROVIDER MARKET AT THIS

11:28AM 2   STAGE IN ARISTA'S --

11:28AM 3   A.   AT THIS STAGE WE WERE NOT CHASING SERVICE PROVIDER

11:28AM 4   CUSTOMERS. THE SALES CYCLE THERE IS JUST TOO LONG. AND AT A

11:28AM 5   SMALLER COMPANY, YOU HAVE TO BE FOCUSED ON CUSTOMERS YOU CAN

11:28AM 6   WIN RATHER THAN GOING AFTER A VERTICAL THAT CAN TAKE SEVERAL

11:28AM 7   YEARS TO DEVELOP.

11:28AM 8   Q.   OKAY. NOW IF WE CAN GO TO THAT PARAGRAPH ON THE SECOND

11:28AM 9   PAGE I PULLED UP. MR. SADANA THIS IS PART OF YOUR E-MAIL IN

11:28AM 10   THIS THREAD, YOU WROTE THIS PART, RIGHT?

11:28AM 11   A.   THAT'S RIGHT.

11:28AM 12   Q.   AND DID YOU EVER BECOME FAMILIAR WITH HOW BNT'S CLI CHANGED

11:29AM 13   OVER TIME?

11:29AM 14   A.   YES.

11:29AM 15   Q.   AND CAN YOU EXPLAIN TO THE JURY WHAT YOU UNDERSTAND

11:29AM 16   HAPPENED WITH BNT'S COMMAND LINE?

11:29AM 17   A.   BNT WHICH STANDS FOR BLADE NETWORK TECHNOLOGIES, WAS

11:29AM 18   ANOTHER START UP WE WERE COMPETING WITH IN THE 2008, 2009

11:29AM 19   TIMEFRAME. AND ORIGINALLY, BNT'S CLI, BNT WAS A SPIN OUT OR

11:29AM 20   SOME KIND OF RELATIONSHIP WITH NORTEL, SO THEY HAD SOME NORTEL

11:29AM 21   CLI, BUT THEN THEY ADDED MORE COMMANDS THAT WERE FROM DIFFERENT

11:29AM 22   OPERATING SYSTEMS LIKE CATOS OR IOS AS STATED IN THE E-MAIL.

11:29AM 23   AND IT TRULY ENDED UP BEING A HODGEPODGE BECAUSE THE

11:29AM 24   CUSTOMER FEEDBACK, THIS WAS NOT SO PRETTY, IT WAS CONFUSING TO

11:29AM 25   THE CUSTOMER.

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:29AM 1   AND IN THE SAME YEAR IN 2009, BNT IN FACT WENT OUT AND

11:29AM 2   CHANGED THEIR CLI TO A MORE ARTIFICIAL CALLED IOS CLI. NOW IOS

11:30AM 3   CLI WAS TALKED ABOUT AT THAT POINT AS INDUSTRY STANDARD CLI,

11:30AM 4   THAT'S HOW THEY DID IT AS WELL. SO RIGHT AROUND THE SAME

11:30AM 5   TIMEFRAME BNT ALSO HAD GONE AFTER WHAT THEY CALL THE INDUSTRY

11:30AM 6   STANDARD CLI WHICH IS IOS LIKE CLI.

11:30AM 7   Q.   DID YOU UNDERSTAND WHAT THAT WAS IN RESPONSE TO BNT'S

11:30AM 8   CHANGE OF THEIR CLI?

11:30AM 9   A.   IT WAS IN RESPONSE TO CUSTOMER FEEDBACK. THE CUSTOMERS

11:30AM 10 WANTED SOMETHING THAT PEOPLE WERE FAMILIAR WITH AND SOMETHING

11:30AM 11 THAT WAS CONSISTENT BECAUSE THE CLI IS LIKE THE LANGUAGE TO THE

11:30AM 12 NETWORK ENGINEER. YOU CANNOT HAVE HALF THE CLI IN ONE LANGUAGE

11:30AM 13 AND THE OTHER HALF IN A DIFFERENT LANGUAGE, IT NEEDED TO BE

11:30AM 14 CONSISTENT.

11:30AM 15 Q.   IF WE COULD MOVE ON TO ANOTHER EXHIBIT, 3623, PLEASE. THIS

11:31AM 16 WAS A SPREADSHEET. THERE IS COMMENTS FROM CUSTOMERS, RIGHT?

11:31AM 17 A.   THAT'S CORRECT.

11:31AM 18 Q.   NOW LET ME JUST ASK YOU A GENERAL QUESTION, MR. SADANA,

11:31AM 19 BASED UPON YOUR EXPERIENCE IN THE NETWORKING INDUSTRY, HOW

11:31AM 20 COMMON IS IT FOR A COMPANY TO CONSIDER WHETHER TO ADD A SIMILAR

11:31AM 21 FEATURE THAT A COMPETITOR MIGHT HAVE?

11:31AM 22 A.   IT'S VERY COMMON.

11:31AM 23 Q.   DID YOU EVER KNOW OF THAT HAPPENING WHILE YOU WERE AT

11:31AM 24 CISCO?

11:31AM 25 A.   YES.

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:31AM 1   Q.   WE LOOKED AT, OR MR. NELSON SHOWED YOU A NUMBER OF LINES IN

11:31AM 2   THIS, WERE THERE ANY FEATURES THAT YOU TALKED ABOUT WITH

11:31AM 3   MR. NELSON, ONES THAT YOU WOULD HAVE CONSIDERED PROPRIETARY TO

11:31AM 4   CISCO?

11:31AM 5   A.   NO.

11:31AM 6   Q.   WERE ANY OF THE LINES THAT MR. NELSON ASKED YOU ABOUT, WERE

11:32AM 7   THOSE ACTUAL CLI COMMANDS IN THOSE LINES?

11:32AM 8   A.   THEY WERE GENERALLY REFERRING TO THE FEATURE OF THE

11:32AM 9   FUNCTIONALITY.

11:32AM 10   Q.   AND JUST TO BE CLEAR, CAN YOU EXPLAIN THE DIFFERENCE

11:32AM 11   BETWEEN THE CLI COMMAND AND THE FEATURE?

11:32AM 12   A.   DEPENDING ON THE FEATURE, SOMETIMES IT CAN BE USED

11:32AM 13   SYNONYMOUSLY BECAUSE NETWORK ENGINEERS REFER TO THE CLI WHEN

11:32AM 14   THEY WANT TO TALK ABOUT THE FEATURE.

11:32AM 15   FOR EXAMPLE, THERE'S A ROUTING PROTOCOL CALLED BGP, AND IF

11:32AM 16   YOU WANT TO CHANGE THE ADVERTISEMENT INTERVAL, YOU SAY, BGP

11:32AM 17   INTERVAL AS SORT OF THE FEATURE, BUT THAT MAY ALSO BE THE

11:32AM 18   COMMAND.

11:32AM 19   Q.   FOR THE FEATURES THAT YOU WALKED THROUGH WITH MR. NELSON,

11:32AM 20   DID ARISTA IMPLEMENT THOSE, TO YOUR KNOWLEDGE?

11:33AM 21   A.   WE IMPLEMENTED, I WOULD SAY, MANY OF THESE, BUT I DON'T

11:33AM 22   RECALL SPECIFICALLY EACH ONE THAT WAS DONE OR NOT. AND IN

11:33AM 23   CERTAIN CASES LIKE ZTP, WHICH WAS DISCUSSED, IF THERE COULD

11:33AM 24   HAVE BEEN A BETTER WAY, WE WOULD HAVE INVENTED THAT AS WELL.

11:33AM 25   Q.   AND WHY DON'T WE TALK ABOUT THAT. I THINK THAT WAS

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:33AM 1   LINE 388 IN THIS SPREADSHEET. SO IF WE COULD FOCUS ON THAT,

11:33AM 2   PLEASE. IS IT POSSIBLE TO BLOW THAT UP OR --

11:33AM 3   A.   NO, I THINK --

11:33AM 4   Q.   OKAY. THERE WE GO.

11:33AM 5   A.   THIS WAS NOT ZTP.

11:33AM 6   Q.   I MUST HAVE WRITTEN DOWN THE WRONG LINE. THERE WAS

11:34AM 7   TESTIMONY, I REMEMBER THE SUBJECT OF IT WAS AUTO PROVISIONING;

11:34AM 8   IS THAT RIGHT?

11:34AM 9   A.   THAT'S RIGHT.

11:34AM 10   Q.   OKAY. AND CAN YOU EXPLAIN WHAT ARISTA DID WITH REGARD TO

11:34AM 11   AN AUTO PROVISIONING FEATURE?

11:34AM 12   A.   THE REQUEST HAD COME FROM EBAY THAT THEY WOULD LIKE TO

11:34AM 13   CONFIGURE THE NETWORK WITHOUT ANYONE MANUALLY CONFIGURING EACH

11:34AM 14   SWITCH ONE BY ONE.

11:34AM 15   AT A COMPANY LIKE EBAY, THEY COULD ADD A HUNDRED RACKS OF

11:34AM 16   SERVERS IN ONE GOAL. SO IT TOOK A LOT OF TIME FOR ONE ENGINEER

11:34AM 17   OR ENGINEERS TO CONFIGURE EACH SWITCH ONE BY ONE.

11:34AM 18   SO THE FEATURE WHICH THEY WERE ASKING FOR IS, IS THERE A

11:34AM 19   WAY TO AUTOMATE THIS PROVISIONING.

11:34AM 20   Q.   SO WHAT DID ARISTA DO?

11:34AM 21   A.   SO EBAY REFERRED, IF YOU LOOK AT THE COMMENT COLUMN, TO

11:35AM 22   THEY LIKE CISCO'S AUTO PROVISIONING THROUGH THE DHCP, BUT WHEN

11:35AM 23   WE HAD THE DISCUSSION WITH EBAY, IT TURNED OUT THAT THE WAY

11:35AM 24   THEY WERE USING CISCO'S AUTO PROVISIONING, IT WASN'T FULLY

11:35AM 25   AUTOMATED, IT WOULD DOWNLOAD THE SOFTWARE IMAGE THAT YOU WANTED

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:35AM 1   TO RUN, BUT IT WOULD NOT DOWNLOAD THE CONFIGURATION FILE ALONG

11:35AM 2   WITH IT.

11:35AM 3   SO IT WAS A TWO-STEP PROCESS, WHILE IT WAS PARTIALLY

11:35AM 4   AUTOMATED, SOMEONE STILL HAD TO GO MANUALLY TYPE A FEW MORE

11:35AM 5   COMMANDS TO MAKE IT HAPPEN.

11:35AM 6   WHAT WE ENDED UP DOING WHICH IS WHY WE CALLED IT ZERO TOUCH

11:35AM 7   PROVISIONING WAS, FOR THE FIRST TIME IN NETWORKING INDUSTRY,

11:35AM 8   THE SWITCHES COULD TRULY BOOT UP ON THEIR OWN THE SOFTWARE

11:35AM 9   IMAGE THAT YOU WANTED TO RUN AND THE CONFIGURATION THAT THE

11:35AM 10 NETWORK NEEDS TO HAVE. EVERYTHING CAME AUTOMATICALLY TO THE

11:35AM 11 NETWORK.

11:35AM 12 Q.   AND WHAT WAS EBAY'S REACTION TO ARISTA'S ZERO TOUCH

11:36AM 13 PROVISIONING FEATURE?

11:36AM 14 A.   THEY WERE DELIGHTED, WE GOT A LOT OF COMPLIMENTS FROM THEM.

11:36AM 15 I WOULD SAY THAT WAS ONE OF THE KEY TURNING POINTS IN OUR

11:36AM 16 RELATIONSHIP WITH EBAY WHEN THEY SAW US NOT ONLY MEETING THEIR

11:36AM 17 REQUIREMENT TO A BARE BONE MINIMUM THAT THEY WERE USING, BUT

11:36AM 18 TRULY INNOVATIVE. AND SINCE THEN, THEY BECAME A SIGNIFICANT

11:36AM 19 CUSTOMER OF ARISTA.

11:36AM 20 Q.   LET'S LOOK AT EXHIBIT 404. THIS IS AN E-MAIL EXCHANGE WITH

11:36AM 21 SOME FOLKS AT FACEBOOK, RIGHT?

11:36AM 22 A.   THAT'S RIGHT.

11:36AM 23 Q.   CAN YOU JUST TELL THE JURY, PLEASE, BRIEFLY, WHAT HAPPENED,

11:36AM 24 WHAT WAS THE RESULT OF THESE DISCUSSIONS WITH FACEBOOK IN 2009?

11:36AM 25 A.   IN 2009 FACEBOOK WAS USING ONE GIGABYTE SWITCHES, AND WE

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:37AM   1   HAD SWITCHES WITH REALLY BIG PACKET BUFFERS AT THAT POINT, BUT

11:37AM   2   DESPITE THE DISCUSSION IN 2009, THEY DID NOT BUY ANY OF OUR

11:37AM   3   PRODUCTS.

11:37AM   4   Q.   HAS FACEBOOK SINCE BECOME AN ARISTA CUSTOMER?

11:37AM   5   A.   YES, THEY HAVE.

11:37AM   6   Q.   AND WHEN DID THAT FIRST HAPPEN?

11:37AM   7   A.   THE FIRST TIME THEY PURCHASED OUR PRODUCTS WAS IN 2011.

11:37AM   8   Q.   AND DID ARISTA INTERACT OR DEAL WITH THE SAME GENTLEMAN

11:37AM   9   FROM FACEBOOK IN 2011 AS ARE COPIED ON IN E-MAIL HERE FROM

11:37AM   10   2009?

11:37AM   11   A.   NO.   THESE NETWORK ENGINEERS HAD LEFT FACEBOOK LONG BEFORE

11:37AM   12   THAT.

11:37AM   13   Q.   OKAY.   MR. NELSON ASKED YOU SOME QUESTIONS ABOUT A COUPLE

11:37AM   14   OF CISCO DOCUMENTS MARKED CISCO CONFIDENTIAL; DO YOU REMEMBER

11:38AM   15   THAT?

11:38AM   16   A.   YES.

11:38AM   17   Q.   LET ME JUST DO SOME FOLLOW UP THERE.

11:38AM   18   DID YOU BRING ANY CISCO MATERIAL WITH YOU WHEN YOU LEFT

11:38AM   19   CISCO TO JOIN ARISTA?

11:38AM   20   A.   NO, I DID NOT.

11:38AM   21   Q.   DOES ARISTA HAVE ANY POLICIES REGARDING EMPLOYEES BRINGS

11:38AM   22   OTHER COMPANY'S CONFIDENTIAL INFORMATION TO ARISTA?

11:38AM   23   A.   YES, WE DO.

11:38AM   24   Q.   WHAT ARE THOSE POLICIES?

11:38AM   25   A.   WHEN AN EMPLOYEE JOINS IN THE EMPLOYEE AGREEMENT, WE

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:38AM 1   CLEARLY HIGHLIGHT THAT EMPLOYEES SHOULD NOT BRING ANY IP OR

11:38AM 2   CONFIDENTIAL INFORMATION FROM THE OUTSIDE.

11:38AM 3   IN ADDITION TO THAT, THERE'S A NEW HIRE GUIDE THAT WE REFER

11:38AM 4   OUR EMPLOYEES TO, AND ESPECIALLY IN THE EARLY DAYS, THE ENTIRE

11:38AM 5   COMPANY, BUT TODAY IT'S MORE FOR THE ENGINEERING TEAM, THAT

11:38AM 6   CLEARLY STATES, DO NOT BRING ANY SOURCE CODE OR ANY

11:38AM 7   CONFIDENTIAL INFORMATION FROM OUTSIDE.

11:38AM 8   AND LASTLY, WE ALSO HAVE A SEPARATE CODE OF CONDUCT POLICY

11:39AM 9   THAT THE EMPLOYEE HAS TO SIGN. AND THIS IS CLEARLY HIGHLIGHTED

11:39AM 10   IN THAT AS WELL.

11:39AM 11   Q.   NOW WITH REGARD TO THE TWO DOCUMENTS MR. NELSON SHOWED YOU,

11:39AM 12   CAN YOU EXPLAIN THE CIRCUMSTANCES IN WHICH THESE MATERIALS WERE

11:39AM 13   FOUND ON YOUR GOOGLE DRIVE, AS YOU TESTIFIED?

11:39AM 14   A.   SURE.   THE DOCUMENTS WERE FOUND AS PART OF THE

11:39AM 15   INVESTIGATION FOR THIS LITIGATION ON MY GOOGLE DRIVE. BUT THEY

11:39AM 16   WERE FOUND IN THE DELETED FOLDER.

11:39AM 17   Q.   SO HOW DID THEY GET IN THE DELETED FOLDER, IF YOU KNOW?

11:39AM 18   A.   AS I MENTIONED, WE GENERALLY TELL EVERYONE NOT TO HAVE ANY

11:39AM 19   CONFIDENTIAL MATERIAL, AND AT ONE POINT I DISCOVERED THAT THESE

11:39AM 20   FILES EXISTED IN MY GOOGLE DRIVE. SO I WENT AND I DELETED

11:40AM 21   THEM.   THIS WAS AROUND JUNE OF 2013, NOTHING TO DO WITH THIS

11:40AM 22   PARTICULAR CASE.

11:40AM 23   AND WHILE I DELETED THE FILES, THE WAY GOOGLE DRIVE WORKS

11:40AM 24   IS THAT THE FILES REMAIN IN THE TRASH PERMANENTLY UNTIL YOU GO

11:40AM 25   AHEAD AND CLEAR IT OUT. I NEVER LOOKED AT IT. AND IN THE

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:40AM 1   SEARCH, THEY SHOWED UP IN THAT DELETED FOLDER.

11:40AM 2   Q.   DID YOU EVER USE ANY OF THOSE DOCUMENTS?

11:40AM 3   A.   NO, WE NEVER USED THESE DOCUMENTS AT ARISTA.

11:40AM 4   Q.   AND I THINK ONE OF THEM JUST SHOWED THE COVER, WAS FOR

11:40AM 5   SOMETHING -- WE COULD CALL IT UP, IT'S SOMETHING CALLED A CFP

11:40AM 6   TRANSCEIVER, THAT'S I THINK EXHIBIT 381?

11:40AM 7   A.   RIGHT.

11:40AM 8   Q.   DOES ARISTA MAKE CFP TRANSCEIVERS?

11:41AM 9   A.   NO, WE DON'T.

11:41AM 10   Q.   NOW I WANT TO LOOK AT ONE MORE DOCUMENT AND THEN WE ARE

11:41AM 11   DONE.

11:41AM 12   MR. NELSON ASKED YOU FOR EXHIBIT 388, IF YOU COULD OPEN

11:41AM 13   THAT UP. AND COULD YOU EXPLAIN TO THE JURY AGAIN WHAT THE

11:41AM 14   PURPOSE OF THIS DOCUMENT IS? OR WAS?

11:41AM 15   A.   THIS IS THE DOCUMENT PREPARED TO EDUCATE OUR SALES TEAM ON

11:41AM 16   NEW PRODUCTS CISCO HAD JUST ANNOUNCED ON WHAT THIS ANNOUNCEMENT

11:41AM 17   WAS AND HOW THEY COULD COMPETE WITH THOSE PRODUCTS.

11:41AM 18   Q.   AND WHAT WAS THE CISCO ANNOUNCEMENT REFERRING TO HERE?

11:42AM 19   A.   THIS TALKS ABOUT THE CISCO NEXUS 9000 SERIES OR THE INSIEME

11:42AM 20   PRODUCTS THAT WERE JUST ACQUIRED IN THAT COMPANY AND RELEASED

11:42AM 21   THEIR PRODUCTS.

11:42AM 22   Q.   I'M SORRY, JUST TO BE CLEAR, CAN YOU EXPLAIN THAT INSIEME

11:42AM 23   IS, TO YOUR KNOWLEDGE?

11:42AM 24   A.   INSIEME IS A GROUP THAT WAS FOUNDED AND FUNDED BY CISCO,

11:42AM 25   BUT AS A SEPARATE COMPANY, VERY MUCH FOCUSED TO COMPETE WITH

946

CROSS-EXAMINATION OF MR. SADANA BY MR. FERRALL

11:42AM 1   ARISTA. AND THEN LATER ON IT WAS ACQUIRED BACK BY CISCO, AND

11:42AM 2   THAT'S WHEN THEY ANNOUNCED THE PRODUCT.

11:42AM 3   Q. OKAY. AND IF WE COULD LOOK AT THE PAGE ENDING IN 875 IN

11:42AM 4   THE SMALL NUMBERS ON THE BOTTOM.

11:42AM 5   THIS PART OF THE SLIDE SAYS INSIEME CLAIMS FIVE P'S, LET'S

11:43AM 6   EXAMINE THEM. CAN YOU FOLLOW ME THE CONTEXT OF THE FIVE P'S?

11:43AM 7   A. WHEN WE SOLD OUR PRESENTED ARISTA PRODUCTS TO OUR CUSTOMER,

11:43AM 8   BEFORE THIS ANNOUNCEMENT WITH CISCO, WE USED TO OFTEN HIGHLIGHT

11:43AM 9   THE FIVE P'S OF OUR CURRENT OFFERING, THE FIVE P'S WERE PRICE,

11:43AM 10 PERFORMANCE, PORT DENSITY, PROGRAMMABILITY, AND POWER

11:43AM 11 EFFICIENCY.

11:43AM 12   AND THEN CISCO ANNOUNCED THEIR PRODUCTS WITH THE SAME FIVE

11:43AM 13 P'S, ESSENTIALLY TO TELL THE WORLD THAT THEY HAD CAUGHT UP WITH

11:43AM 14 US.

11:43AM 15 Q. OKAY. AND IF WE COULD JUST LOOK, WE WILL LOOK AT 51 PAGE

11:43AM 16 HERE THE PAGE ENDING IN 900, IF WE COULD PULL THAT UP. AND

11:44AM 17 BRIEFLY, MR. SADANA, IF YOU COULD JUST EXPLAIN TO THE JURY WHAT

11:44AM 18 WAS BEING CONVEYED HERE BY THIS CHART.

11:44AM 19 A. CISCO JUST ANNOUNCED THEIR NEXUS 9000 SERIES PRODUCTS AND

11:44AM 20 THIS WAS A SIDE-BY-SIDE COMPARISON BETWEEN THE SIX PRODUCTS AND

11:44AM 21 THE ARISTA PRODUCTS. AND WE WENT INTO DIFFERENT CATEGORIES OR

11:44AM 22 ATTRIBUTES OF THE PRODUCT, WE GET THE DENSITY, THE NUMBER OF

11:44AM 23 PORTS, THE POWER CONSUMPTION, THE PACKET MEMORY, WHICH IS TO

11:44AM 24 HANDLE CONNECTION IN THE NETWORK, THE TYPE OF AIR FLOW, AS WELL

11:44AM 25 AS RIGHT AT THE TOP, THE PROGRAMABILITY APPROACH OF THE

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:44AM 1   OPERATING SYSTEM.

11:44AM 2   Q.   AND WHAT WERE THE HIGHLIGHTS, IN ARISTA'S VIEW, OF THIS

11:45AM 3   COMPARISON?

11:45AM 4   A.   I THINK THE KEY MESSAGE HERE WAS THAT FOR THE IMPORTANT

11:45AM 5   ATTRIBUTES TO THE CUSTOMER, BE IT NUMBER OF PORTS, OR BE IT

11:45AM 6   POWER CONSUMPTION OR BE IT PROGRAMMABILITY, IN EACH OF THE

11:45AM 7   DIMENSIONS, ARISTA HAD AN OFFERING THAT WAS SIGNIFICANTLY

11:45AM 8   BETTER THAN CISCO'S. HENCE, THE CONCLUSION ON THE SLIDE THAT

11:45AM 9   ARISTA LEADS IN PORT DENSITY, POWER EFFICIENCY AND

11:45AM 10   PROGRAMMABILITY.

11:45AM 11   Q.   AND HOW WOULD THE INFORMATION, AS SHOWN ON THIS CHART, BE

11:45AM 12   USED BY ARISTA?

11:45AM 13   A.   THIS PRESENTATION WAS PREPARED TO EDUCATE OUR SALES TEAM,

11:45AM 14   BUT THEN OUR SALES TEAM WOULD TAKE SUCH A SLIDE AND SHOW IT TO

11:45AM 15   THE CUSTOMER. SO IT'S A CUSTOMER PRESENTATION, ESSENTIALLY.

11:45AM 16   Q.   AND DO ANY OF THE FACTORS OR FEATURES THAT YOU'RE

11:46AM 17   HIGHLIGHTING HERE IN THIS CHART, DO THEY REFER TO THE CLI?

11:46AM 18   A.   NO, THEY DO NOT.

11:46AM 19   MR. FERRALL: NO FURTHER QUESTIONS.

11:46AM 20   THANK YOU, MR. SADANA.

11:46AM 21   THE COURT: MR. NELSON, DO YOU HAVE SOME FOLLOW UP?

11:46AM 22   MR. NELSON: JUST A LITTLE BIT, YOUR HONOR.

11:46AM 23   THE COURT: OKAY.

11:46AM 24

11:46AM 25   **REDIRECT EXAMINATION BY MR. NELSON**

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:46AM 1

11:46AM 2   BY MR. NELSON:

11:46AM 3   Q.   LET'S JUST PICK UP RIGHT WHERE YOU LEFT OFF THERE WITH THE

11:46AM 4   DOCUMENT. GO BACK TO THE SAME PAGE. I BELIEVE IT'S

11:46AM 5   EXHIBIT 388. AND I THINK IT WAS THE PAGE ENDING IN 900.

11:47AM 6   SO IF YOU LOOK AT THE NX 9516, THAT'S A SIX PRODUCT, RIGHT,

11:47AM 7   THAT YOU ARE COMPARING TO

11:47AM 8   A.   THAT'S CORRECT.

11:47AM 9   Q.   YOU SEE THE SYSTEM CAPACITY?

11:47AM 10   A.   YES.

11:47AM 11   Q.   IT SAYS 61, I ASSUME THAT'S TERRA BYTES PER SECOND?

11:47AM 12   A.   TERRA BITS PER SECOND.

11:47AM 13   Q.   TERRA BITS PER SECOND, SO THAT'S LIKE A TRILLION, RIGHT?

11:47AM 14   IT'S A LOT?

11:47AM 15   A.   IT'S A THOUSAND TIMES A BILLION, YES.

11:47AM 16   Q.   YEAH, SO A TRILLION?

11:47AM 17   A.   YES.

11:47AM 18   Q.   OKAY. SO 61 TRILLION BITS PER SECOND. SO THAT'S 21

11:47AM 19   TRILLION BITS PER SECOND MORE THAN THE HIGHEST CAPACITY ARISTA

11:47AM 20   PRODUCT, RIGHT?

11:47AM 21   A.   EXCEPT THAT THE NEXUS 9516 WAS NOT READY, IT WAS NOT

11:47AM 22   SHIPPING, IT WAS NOT AVAILABLE AT THAT TIME.

11:47AM 23   Q.   OKAY. BUT THAT WAS WHAT YOU UNDERSTOOD THE SYSTEM CAPACITY

11:47AM 24   TO BE, CORRECT?

11:47AM 25   A.   THAT'S RIGHT.

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:47AM 1   Q.   AND THAT'S AN IMPORTANT THING TO CUSTOMERS, CORRECT?

11:48AM 2   MR. NELSON: IS THAT NOT ON YOUR SCREEN?

11:48AM 3   MR. VAN NEST: COUNSEL, WAS THERE 381 OR 388?

11:48AM 4   THE COURT: THIS IS 388.

11:48AM 5   MR. VAN NEST: 388. THANK YOU.

11:48AM 6   THE COURT: 388.

11:48AM 7   MR. NELSON: RIGHT. THAT'S WHAT I SAID.

11:48AM 8   THE COURT: YOU DID. IT IS.

11:48AM 9   BY MR. NELSON:

11:48AM 10   Q.   OKAY. AND SYSTEM CAPACITY IS OBVIOUSLY AN IMPORTANT THING

11:48AM 11   TO CUSTOMERS, CORRECT?

11:48AM 12   A.   THE SYSTEM CAPACITY IS SOMETHING THAT THE CUSTOMER CANNOT

11:48AM 13   USE BECAUSE DIFFERENT COMPANIES COUNT IT DIFFERENTLY. WHAT THE

11:48AM 14   CUSTOMERS CAN USE ARE THE PORTS WHETHER IT'S A 10 GIG PORT OR

11:48AM 15   40 GIG PORT. AND HENCE THE NUMBER OF 10 GIG PORTS AND THE

11:48AM 16   NUMBER OF 40 GIG PORTS IS WHAT MATTERS TO THE CUSTOMER, IT'S

11:48AM 17   THE USABLE SYSTEM CAPACITY.

11:48AM 18   Q.   OKAY. SO WHAT YOU WERE SAYING HERE IS YOU WERE DOING A

11:48AM 19   COMPARISON BUT YOU WERE COMPARING SOMETHING THAT WAS TOTALLY

11:48AM 20   UNIMPORTANT, RIGHT, THAT WAS YOUR TESTIMONY?

11:48AM 21   A.   NO. WE WERE BEING VERY DIRECT BECAUSE THIS IS WHAT CISCO

11:49AM 22   WAS ADVERTISING, AND WE ARE TELLING OUR CUSTOMERS THIS IS THE

11:49AM 23   ATTRIBUTES THAT CISCO JUST AN ANNOUNCED OF THEIR PRODUCT.

11:49AM 24   IF SOMEONE ASKED US HOW COME CISCO IS 61 TERABYTES AND YOU

11:49AM 25   ARE 40 TERABYTES, THEN WE WOULD HAVE THE DISCUSSION WITH THE

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:49AM 1   CUSTOMER ON HOW MANY PORTS CAN YOU USE.

11:49AM 2   AS YOU CAN SEE ON THE CISCO PRODUCT, IT HAS 768 PORTS,

11:49AM 3   WHEREAS WE HAVE 2,048 PORTS. SO THE USABILITY CAPACITY IS MUCH

11:49AM 4   MORE ON THE ARISTA PRODUCTS.

11:49AM 5   WE HAD THAT DISCUSSION. WE ARE VERY DIRECT WITH OUR

11:49AM 6   CUSTOMERS. WE DON'T HIDE A FACT THAT CISCO IS GOING TO PUT IN

11:49AM 7   IF CERTAIN DIMENSIONS FOR A ROUTER. YOU ARE GOING TO PUT IT

11:49AM 8   OUT THERE AND THEN HAVE A DISCUSSION WITH THE CUSTOMER.

11:49AM 9   THE COURT: ALL RIGHT. YOU HAVE TO SLOW DOWN.

11:49AM 10   IMAGINE YOU WERE WRITING DOWN WHAT YOU WERE SAYING, IT'S

11:49AM 11   VERY DIFFICULT.

11:49AM 12   THANK YOU.

11:49AM 13   THE WITNESS: UNDERSTOOD.

11:49AM 14   BY MR. NELSON:

11:49AM 15   Q.   OKAY, SIR, SO THEN I WANT TO GO BACK TO THE BRIEFLY TO THE

11:49AM 16   DOCUMENTS, JUST TO BE CLEAR.

11:49AM 17   SO YOU FOUND THEM, YOU SAY IN YOUR DELETED FOLDER, WHEN YOU

11:50AM 18   WERE LOOKING FOR DOCUMENTS FOR THE LITIGATION, CORRECT?

11:50AM 19   A.   THE ITC FOUND THEM, THAT'S RIGHT.

11:50AM 20   Q.   BUT I THINK YOU SAID YOU DELETED THEM IN 2013?

11:50AM 21   A.   CORRECT. THAT'S CORRECT.

11:50AM 22   Q.   SO YOU HAD THOSE CISCO HIGHLY ADDITIONAL DOCUMENTS ON YOUR

11:50AM 23   SYSTEM AS OF JUNE 2013, CORRECT?

11:50AM 24   A.   THAT'S WHEN I FOUND THEM AND DELETED THEM, CORRECT.

11:50AM 25   Q.   AND YOU UNDERSTAND THAT IT WAS WRONG FOR YOU TO HAVE THOSE

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:50AM 1   DOCUMENTS, CORRECT?

11:50AM 2   A.   I SHOULD NOT HAVE HAD THOSE, THAT'S RIGHT.

11:50AM 3   Q.   RIGHT. AND YOU DIDN'T GO TO -- YOU HAVE A LEGAL

11:50AM 4   DEPARTMENT, DON'T YOU?

11:50AM 5   A.   YES, WE DO.

11:50AM 6   Q.   YOU DIDN'T GO TO SOMEBODY IN THE LEGAL DEPARTMENT AND SAID

11:50AM 7   OH, I FOUND THESE HIGHLY CONFIDENTIAL CISCO DOCUMENTS, WHAT

11:50AM 8   SHOULD I DO, RIGHT?

11:50AM 9   A.   NO, I DID NOT, RIGHT.

11:50AM 10   Q.   BUT YOU SAY YOU HAVE AN EMPLOYEE POLICY THAT TELLS YOU THAT

11:50AM 11   YOU SHOULDN'T HAVE THOSE THINGS?

11:50AM 12   A.   I SHOULD NOT HAVE BROUGHT THESE IN.

11:50AM 13   Q.   AND IT'S THE LEGAL DEPARTMENT THAT GIVES THAT COMPANY

11:50AM 14   POLICY, CORRECT?

11:50AM 15   A.   LEGAL AND HR, CORRECT.

11:50AM 16   Q.   BUT YOU DIDN'T REPORT BACK THAT YOU HAD THESE, CORRECT?

11:50AM 17   A.   NO.

11:50AM 18   Q.   NOW I WANT TO JUST TOUCH BRIEFLY ON THIS VERTICAL MARKET

11:51AM 19   THING YOU WERE TALKING ABOUT.

11:51AM 20   SO YOU SAID THERE'S DIFFERENT VERTICAL MARKETS MEANING

11:51AM 21   DIFFERENT CUSTOMER TARGETS, CORRECT?

11:51AM 22   A.   THAT'S RIGHT.

11:51AM 23   Q.   AND YOU REFER TO CLOUD COMPUTING SEVERAL TIMES; IS THAT

11:51AM 24   RIGHT?

11:51AM 25   A.   YES.

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:51AM 1   Q.   SO WOULD YOU SAY CLOUD COMPUTING IS A DIFFERENT VERTICAL

11:51AM 2   MARKET THAN DATA CENTERS?

11:51AM 3   A.   DATA CENTER SWITCHING IS THE ENTIRE MARKET.

11:51AM 4   Q.   OKAY. NOW MY QUESTION IS, YOU'VE TOLD US ABOUT JUNOS BEING

11:51AM 5   AN INDUSTRY STANDARD IN A CERTAIN VERTICAL MARKET AND YOU THINK

11:51AM 6   IOS IS AN INDUSTRY STANDARD IN A DIFFERENT VERTICAL MARKET.

11:51AM 7   DO YOU THINK ARISTA EOS IS AN INDUSTRY STANDARD IN ANY

11:51AM 8   VERTICAL MARKET AT ALL?

11:51AM 9   A.   I THINK TODAY IN THE CLOUD IT IS.

11:51AM 10   Q.   OKAY. SO ARISTA NOW IS, YOU SAY IS AN INDUSTRY STANDARD AS

11:51AM 11   WELL, RIGHT?

11:51AM 12   A.   IN THE CLOUD, YES.

11:51AM 13   Q.   OKAY. SO THAT'S THREE THAT WE HAVE. AND THAT'S, THAT'S

11:52AM 14   JUST BECAUSE YOU SAY IT'S THE MOST POPULAR IN THE CLOUD,

11:52AM 15   CORRECT?

11:52AM 16   A.   WHAT DO YOU MEAN BY THAT'S THREE? BY THREE YOU MEAN JUNOS,

11:52AM 17   IOS AND EOS?

11:52AM 18   Q.   CORRECT. THAT'S THREE THAT YOU'VE SAID ARE INDUSTRY

11:52AM 19   STANDARDS, RIGHT?

11:52AM 20   A.   EOS ARE ARISTA PRODUCTS ARE NOW VERY POPULAR WITH CLOUD

11:52AM 21   COMPANIES AND IN THAT PERSPECTIVE, YOU COULD SAY YES EOS WAS

11:52AM 22   BEFORE OR RATHER THE INDUSTRY STANDARD IN THAT WAY.

11:52AM 23   Q.   RIGHT. SO WHAT YOU ARE SAYING IS IT'S THE MOST POPULAR

11:52AM 24   WITH CUSTOMERS, RIGHT, THAT'S WHAT YOU ARE SAYING, WHEN YOU ARE

11:52AM 25   USING THE TERM INDUSTRY STANDARD?

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:52AM 1   A.   THAT'S CORRECT.

11:52AM 2   MR. NELSON: THANK YOU, SIR. I DON'T HAVE ANY

11:52AM 3   FURTHER QUESTIONS FOR YOU.

11:52AM 4   MR. FERRALL: NO FURTHER QUESTIONS.

11:52AM 5   THE COURT: THANK YOU.

11:52AM 6   ALL RIGHT. MR. SADANA, THANK YOU FOR YOUR TESTIMONY. YOU

11:53AM 7   ARE FREE TO GO.

11:53AM 8   MR. NELSON, YOUR NEXT WITNESS?

11:53AM 9   MR. NELSON: YES, YOUR HONOR.

11:53AM 10   AT THIS POINT WE CALL MR. CHARLES GIANCARLO.

11:53AM 11   MR. FERRALL: BEFORE WE BRING MR. GIANCARLO IN,

11:53AM 12   YOUR HONOR, COULD WE HAVE A SIDEBAR REGARDING INSTRUCTIONS?

11:53AM 13   THE COURT: OF COURSE. SURE. YEAH.

11:53AM 14   (SIDEBAR DISCUSSION ON THE RECORD.)

11:53AM 15   THE COURT: SO IS THERE AN INSTRUCTION?

11:53AM 16   MR. FERRALL: I THINK, WE HAD IT STIPULATED WE FILED

11:53AM 17   IT LAST NIGHT, WE'VE GOT A COPY.

11:53AM 18   THE COURT: I PRINTED IT OUT AND I DON'T THINK I

11:53AM 19   BROUGHT IT, SO THANK YOU. LET ME JUST TAKE A LOOK. OH, THAT'S

11:54AM 20   IT. GREAT. GOOD. AND IT'S AGREED TO, I CAN READ IT?

11:54AM 21   MR. NELSON: YEAH, THAT'S FINE.

11:54AM 22   THE COURT: JUST AFTER HE TAKES HIS OATH.

11:54AM 23   MR. NELSON: I BELIEVE SO.

11:54AM 24   MR. FERRALL: YES.

11:54AM 25   THE COURT: IS MR. GIANCARLO IN THE COURTROOM?

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:54AM 1   MR. VAN NEST: HE IS, YOUR HONOR, HE'S RIGHT OUT IN

11:54AM 2 THE HALL. WE WILL BRING HIM IN.

11:54AM 3   THE COURT: MR. GIANCARLO, IF YOU WOULD COME FORWARD

11:54AM 4 TO THE WITNESS STAND, PLEASE AND STAND TO BE SWORN.

11:55AM 5

11:55AM 6   **CHARLES GIANCARLO,**

11:55AM 7   BEING CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF,

11:55AM 8 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS

11:55AM 9 FOLLOWS:

11:55AM 10   THE WITNESS: YES.

11:55AM 11   THE CLERK: THANK YOU, SIR.

11:55AM 12   MR. NELSON: MAY I APPROACH, YOUR HONOR?

11:55AM 13   THE COURT: YES.

11:55AM 14   ALL RIGHT. LADIES AND GENTLEMEN, I HAVE A JURY INSTRUCTION

11:55AM 15 TO GIVE YOU BEFORE MR. GIANCARLO GIVES HIS TESTIMONY. I NEED

11:55AM 16 TO PROVIDE YOU WITH SOME INSTRUCTIONS REGARDING THE PURPOSE FOR

11:55AM 17 WHICH YOU MAY CONSIDER MR. GIANCARLO'S TESTIMONY.

11:55AM 18   DURING A TRIAL, CERTAIN EVIDENCE MAY BE ADMITTED ONLY FOR A

11:55AM 19 LIMITED PURPOSE. MR. GIANCARLO'S TESTIMONY IS SUCH EVIDENCE.

11:55AM 20 CISCO'S PRESENTING MR. GIANCARLO'S TESTIMONY ON CISCO'S 2003

11:55AM 21 LAWSUIT AGAINST HUAWEI, WHICH INCLUDES THE INTRODUCTION OF THE

11:55AM 22 DECLARATION OF MR. GIANCARLO SIGNED WHILE HE WAS EMPLOYED BY

11:56AM 23 CISCO AS PART OF THE LITIGATION.

11:56AM 24   IN CONSIDERING MR. GIANCARLO'S TESTIMONY, YOU CANNOT RELY

11:56AM 25 ON THE DECLARATION FOR THE TRUTH OF THE MATTERS ASSERTED IN

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:56AM 1   THAT DECLARATION. THAT MEANS THAT YOU CANNOT ASSUME THAT THE

11:56AM 2   STATEMENTS MADE IN THE DECLARATION ARE ESTABLISHED FACTS. YOU

11:56AM 3   MAY ONLY CONSIDER THE DECLARATION AS EVIDENCE OF CISCO'S STATE

11:56AM 4   OF MIND.

11:56AM 5   YOU MUST UNDERSTAND THAT MR. GIANCARLO HAD NO AFFILIATION

11:56AM 6   WITH ARISTA AT THE TIME HE SIGNED THE DECLARATION. AND THAT

11:56AM 7   THE DECLARATION WAS NOT MADE PUBLIC UNTIL MARCH 2016. YOU MUST

11:56AM 8   NOT IMPUTE KNOWLEDGE OF THE CONTENTS OF THE DECLARATION TO

11:56AM 9   ARISTA.

11:56AM 10   IN OTHER WORDS, YOU MAY NOT CONSIDER MR. GIANCARLO'S

11:56AM 11   TESTIMONY AS EVIDENCE OF WHAT ARISTA KNEW OR REASONABLY SHOULD

11:56AM 12   HAVE KNOWN AT ANY POINT IN TIME.

11:56AM 13   YOU MAY ONLY CONSIDER THE DECLARATION IN THE CONTEXT OF

11:56AM 14   WHAT CISCO MIGHT HAVE THOUGHT AT THE TIME OF ITS FILING.

11:57AM 15   GO AHEAD.

11:57AM 16

11:57AM 17   **DIRECT EXAMINATION BY MR. NELSON**

11:57AM 18

11:57AM 19   BY MR. NELSON:

11:57AM 20   Q.   AND I DON'T THINK YOU HAD A CHANCE TO INTRODUCE YOURSELF.

11:57AM 21   COULD YOU PLEASE INTRODUCE YOURSELF TO THE JURY, SIR?

11:57AM 22   A.   YES. MY NAME IS CHARLES GIANCARLO.

11:57AM 23   I AM, AS STATED, I WAS AN EXECUTIVE AT CISCO SYSTEMS AT THE

11:57AM 24   TIME OF THE DECLARATION.

11:57AM 25   Q.   SIR, LET ME JUST SO WE'RE CLEAR. NOW YOU ARE AN ARISTA

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:57AM 1   BOARD MEMBER, CORRECT?

11:57AM 2   A.   THAT'S CORRECT.

11:57AM 3   Q.   AND THAT'S SINCE 2013, I BELIEVE?

11:57AM 4   A.   THAT'S CORRECT.

11:57AM 5   Q.   AND BACK, I THINK IT WAS 1994, YOU STARTED AT CISCO; IS

11:57AM 6   THAT RIGHT?

11:57AM 7   A.   YES.

11:57AM 8   Q.   AND YOU WERE AT CISCO THEN FROM 1994 TO 2007; IS THAT

11:57AM 9   CORRECT?

11:57AM 10   A.   THAT IS CORRECT.

11:57AM 11   Q.   AND THE 2003, I BELIEVE YOU BECAME CTO OF CISCO; IS THAT

11:57AM 12   CORRECT?

11:57AM 13   A.   YES.

11:57AM 14   Q.   THAT'S THE CHIEF TECHNOLOGY OFFICER?

11:58AM 15   A.   YES.

11:58AM 16   Q.   AND THEN IN 2004 UNTIL THE TIME YOU LEFT IN 2007, YOU WERE

11:58AM 17   THE CHIEF DEVELOPMENT OFFICER; IS THAT RIGHT?

11:58AM 18   A.   YES.

11:58AM 19   Q.   AND THAT'S BASICALLY THE HIGHEST RANKING ENGINEER AT CISCO,

11:58AM 20   CORRECT?

11:58AM 21   A.   THAT'S CORRECT.

11:58AM 22   Q.   NOW SIR, I WANT TO FOCUS ON THE HUAWEI CASE NOW. YOU'RE

11:58AM 23   AWARE THAT THERE WAS A LITIGATION THAT CISCO FILED AGAINST

11:58AM 24   HUAWEI IN 2003, CORRECT?

11:58AM 25   A.   YES.

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

11:58AM 1   Q.   AND IN FACT, YOU WERE, I BELIEVE, THE EXECUTIVE IN CHARGE

11:58AM 2   OF INITIATING AND PURSUING THE CISCO LAWSUIT AGAINST HUAWEI,

11:58AM 3   CORRECT?

11:58AM 4   A.   YES.

11:58AM 5   Q.   AND SO, YOU WERE FAMILIAR WITH THE CLAIMS THAT WERE BEING

11:58AM 6   MADE IN THE CASE, CORRECT?

11:58AM 7   A.   NOT ENTIRELY. I WAS FAMILIAR THAT WE -- IN FACT I, AS YOU

11:58AM 8   MENTIONED, WAS URGING A LAWSUIT AGAINST HUAWEI, BUT I WAS NOT

11:59AM 9   SPECIFICALLY INVOLVED IN THE LEGAL STRATEGY ASSOCIATED WITH IT.

11:59AM 10   Q.   BUT YOU WERE THE EXECUTIVE IN CHARGE OF INITIATING AND

11:59AM 11   PURSUING THE CISCO LAWSUIT AGAINST HUAWEI, CORRECT?

11:59AM 12   A.   I WAS THE CHAMPION, LET'S SAY, OF THE LAWSUIT, BUT I WAS

11:59AM 13   NOT RESPONSIBLE FOR THE LAWSUIT.

11:59AM 14   Q.   SO I WANT YOU TO TURN TO EXHIBIT 4671 IN YOUR BINDER. SO

11:59AM 15   IF YOU LOOK AT 4671 THIS IS A COPY OF THE COMPLAINT FILED BY

11:59AM 16   CISCO SYSTEMS AGAINST HUAWEI, CORRECT?

11:59AM 17   A.   THAT'S WHAT IT SAYS, YES.

11:59AM 18   Q.   RIGHT. AND THAT WAS FILED JANUARY 22ND, 2003, CORRECT?

11:59AM 19   A.   YES.

11:59AM 20   Q.   AND YOU UNDERSTAND THAT THE COMPLAINT DETAILS THE CLAIMS IN

11:59AM 21   THE CASE, CORRECT?

11:59AM 22   A.   I HAVE NOT SEEN THIS DOCUMENT BEFORE, SO I HAVE TO TAKE

11:59AM 23   YOUR WORD ON THAT.

11:59AM 24   Q.   YOU WERE THE EXECUTIVE IN CHARGE OF FILING THE LAWSUIT

12:00PM 25   AGAINST HUAWEI AND YOU NEVER SAW THE COMPLAINT?

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

12:00PM 1   A.   LET ME BE CLEAR, I WAS NOT THE EXECUTIVE IN CHARGE OF

12:00PM 2   FILING THE LAWSUIT, I WAS THE EXECUTIVE RESPONSIBLE FOR THE

12:00PM 3   PRODUCTS THAT HUAWEI WAS IMITATING, AND I URGED, I WAS THE

12:00PM 4   EXECUTIVE THAT URGED US TO INITIATE A LAWSUIT AGAINST HUAWEI.

12:00PM 5   Q.   SIR, ISN'T IT TRUE THAT YOU WERE THE EXECUTIVE IN CHARGE OF

12:00PM 6   INITIATING AND PURSUING THE CISCO LAWSUIT AGAINST HUAWEI?

12:00PM 7   A.   IT IS NOT TRUE.

12:00PM 8   Q.   IT IS NOT TRUE. CAN YOU LOOK AT EXHIBIT 249 IN YOUR

12:00PM 9   BINDER.

12:00PM 10 A.   YES.

12:00PM 11 Q.   ARE YOU THERE?

12:00PM 12 A.   YES.

12:00PM 13 Q.   AND SIR, THIS IS A PRINT OUT OF A BLOG THAT YOU PUBLISHED

12:01PM 14 DECEMBER 19TH, 2014, CORRECT?

12:01PM 15 A.   YES.

12:01PM 16 Q.   AND IF YOU LOOK TO THE VERY BOTTOM OF THAT, WELL, FIRST,

12:01PM 17 LET ME JUST ESTABLISH, YOU WROTE THIS BLOG, CORRECT?

12:01PM 18 A.   THAT'S CORRECT.

12:01PM 19 Q.   AND YOU -- THIS IS A PUBLIC THING THAT YOU TOLD THE PUBLIC,

12:01PM 20 CORRECT?

12:01PM 21 A.   CORRECT.

12:01PM 22 Q.   AND SO IF WE LOOK DOWN AT THE FIRST PAGE OF THAT, YOU SEE

12:01PM 23 WHERE IT SAYS INSINUATIONS COMPARING US TO HUAWEI?

12:01PM 24 A.   YES.

12:01PM 25 Q.   DOESN'T IT SAY, I WAS THE EXECUTIVE IN CHARGE OF INITIATING

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

12:01PM   1   AND PURSUING THE CISCO LAWSUIT AGAINST HUAWEI?

12:01PM   2   A.   YES.

12:01PM   3   Q.   SO THAT'S A TRUE STATEMENT, RIGHT?

12:01PM   4   A.   YES, BUT I WANT TO BE VERY CLEAR AS TO WHAT IT MEANS. I

12:01PM   5   WAS THE EXECUTIVE THAT, AS OPPOSED TO AN ATTORNEY, I WAS THE

12:01PM   6   EXECUTIVE WHO URGED US TO PURSUE A LAWSUIT AGAINST HUAWEI. I

12:01PM   7   WAS NOT RESPONSIBLE FOR CONDUCTING THE LAWSUIT AGAINST HUAWEI.

12:01PM   8   Q.   WELL NOT JUST PURSUE, INITIATE AS WELL, CORRECT?

12:01PM   9   A.   INITIATE, YES, I URGED THE INITIATION OF A LAWSUIT.

12:02PM   10   Q.   SO, SIR, YOU'RE AWARE THAT A COMPLAINT IS A PUBLIC

12:02PM   11   DOCUMENT, CORRECT?

12:02PM   12   A.   YES.

12:02PM   13   Q.   AND YOU'RE AWARE THAT A COMPLAINT DETAILS THE CLAIMS THAT

12:02PM   14   ARE MADE IN THE CASE, CORRECT?

12:02PM   15   A.   CORRECT.

12:02PM   16   MR. NELSON: AT THIS POINT I MOVE EXHIBIT 4671 INTO

12:02PM   17   EVIDENCE, YOUR HONOR.

12:02PM   18   MR. FERRALL: NO OBJECTION.

12:02PM   19   THE COURT: IT WILL BE ADMITTED.

12:02PM   20   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 4671, HAVING BEEN

12:02PM   21   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

12:02PM   22   EVIDENCE.)

12:02PM   23   BY MR. NELSON:

12:02PM   24   Q.   NOW IF WE LOOK HERE, JUST TO REMIND US, WE HAVE THE

12:02PM   25   COMPLAINT, CISCO SYSTEMS AGAINST HUAWEI. AND IF YOU GO TO THE

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

12:02PM 1   TOP THERE, MR. FISHER, IT WILL HAVE THE FILING DATE OF

12:02PM 2   JANUARY 22ND, 2003.

12:02PM 3   DO YOU SEE THAT?

12:02PM 4   A.   YES.

12:02PM 5   Q.   NOW, SIR, I JUST WANT TO LOOK AT A FEW THINGS IN THIS

12:02PM 6   COMPLAINT.

12:02PM 7   IF YOU LOOK AT THE END OF THE FIRST PARAGRAPH WHICH STARTS

12:03PM 8   ON PAGE 2. YOU WILL SEE IT SAYS, DEFENDANTS HAVE COPIED

12:03PM 9   CISCO'S PATENTED TECHNOLOGIES, THEY HAVE COPIED THE COPYRIGHTED

12:03PM 10   USER INTERFACE FOR CISCO'S ROUTERS AND THEY HAVE MADE VERBATIM

12:03PM 11   COPIES OF WHOLE PORTIONS OF CISCO'S USER'S MANUALS, AND THERE

12:03PM 12   IS OVERWHELMING EVIDENCE THAT THEY HAVE UNLAWFULLY GAINED

12:03PM 13   ACCESS TO CISCO'S SOURCE CODE AND COPIED IT AS A BASIS FOR THE

12:03PM 14   OPERATING SYSTEM FOR THEIR KNOCK-OFF ROUTER, CORRECT?

12:03PM 15   A.   CORRECT.

12:03PM 16   Q.   THAT WAS A TRUE STATEMENT, CORRECT?

12:03PM 17   A.   YES.

12:03PM 18   Q.   OKAY. AND SO ONE OF THE CLAIMS THAT WAS BEING MADE IS THAT

12:03PM 19   THERE WERE PATENTED TECHNOLOGIES THAT WERE BEING INFRINGED,

12:03PM 20   CORRECT?

12:04PM 21   A.   CORRECT.

12:04PM 22   Q.   AND ONE OF THE CLAIMS, IN FACT THE SECOND LISTED ONE IS

12:04PM 23   THAT HUAWEI COPIED THE COPYRIGHTED USER INTERFACE FOR CISCO

12:04PM 24   ROUTERS, CORRECT?

12:04PM 25   A.   YES.

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

12:04PM   1   Q.   AND THAT'S THE CISCO IOS CLI, CORRECT?

12:04PM   2   A.   WELL, AGAIN, THIS IS THE FIRST TIME I'M SEEING THIS

12:04PM   3   DOCUMENT, SO I CAN'T SAY SPECIFICALLY WHAT THIS DOCUMENT IS

12:04PM   4   REFERRING TO, BUT I ASSUME THAT THEY HAVE, BECAUSE THEY COPIED

12:04PM   5   THE ENTIRE SOFTWARE OF CISCO, THAT IT COPIES IN FACT THE

12:04PM   6   COMMAND STRUCTURE AS WELL, MEANING THE CLI.

12:04PM   7   Q.   NOW, SIR, CAN YOU TURN TO EXHIBIT 250.

12:05PM   8   A.   YES.

12:05PM   9   Q.   NOW EXHIBIT 250 IS A COPY OF A DECLARATION OF YOURSELF IN

12:05PM   10   SUPPORT OF PLAINTIFF CISCO'S MOTION FOR PRELIMINARY INJUNCTION,

12:05PM   11   CORRECT?

12:05PM   12   A.   YES.

12:05PM   13   Q.   SO THIS IS A DECLARATION THAT YOU FILED IN THE CASE, RIGHT?

12:05PM   14   A.   THAT'S CORRECT.

12:05PM   15   Q.   AND I UNDERSTAND AND THE JUDGE MADE THE ORDER, IT WAS FILED

12:05PM   16   UNDER SEAL?

12:05PM   17   A.   YES.

12:05PM   18   Q.   UNDER SEAL MEANS THAT IT'S NOT AVAILABLE TO THE PUBLIC,

12:05PM   19   CORRECT?

12:05PM   20   A.   YES.

12:05PM   21   Q.   GOOD. THE COMPLAINT ON THE OTHER HAND WASN'T FILED UNDER

12:05PM   22   SEAL, CORRECT?

12:05PM   23   A.   I DON'T KNOW THAT FOR A FACT, BUT YES, I ASSUME SO.

12:05PM   24   Q.   OKAY. NOW I WANT YOU TO LOOK AT THE FIRST PARAGRAPH IN

12:05PM   25   YOUR DECLARATION --

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

12:05PM 1   MR. NELSON: ACTUALLY, AT THIS POINT, I GUESS I

12:05PM 2   SHOULD MOVE INTO EVIDENCE EXHIBIT 250 FOR THE PURPOSE

12:05PM 3   YOUR HONOR READ IT FOR.

12:05PM 4   THE COURT: ANY OBJECTION?

12:05PM 5   MR. FERRALL: NO OBJECTION.

12:05PM 6   THE COURT: IT WILL BE ADMITTED.

12:05PM 7   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 250, HAVING BEEN

12:05PM 8   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

12:05PM 9   EVIDENCE.)

12:05PM 10 BY MR. NELSON:

12:05PM 11 Q.   SO IF WE LOOK AT THE VERY FIRST PARAGRAPH, IT SAYS I,

12:06PM 12 CHARLES GIANCARLO, DECLARE AS FOLLOWS: I MAKE THIS DECLARATION

12:06PM 13 IN SUPPORT OF CISCO SYSTEM, INC.'S AND CISCO TECHNOLOGY,

12:06PM 14 INC.'S, COLLECTIVELY CISCO, MOTION FOR PRELIMINARY INJUNCTION

12:06PM 15 AGAINST HUAWEI TECHNOLOGIES COMPANY, LTD, HUAWEI AMERICA AND

12:06PM 16 FUTUREWEI TECHNOLOGIES. I HAVE PERSONAL KNOWLEDGE OF THE FACTS

12:06PM 17 SET FORTH IN THIS DECLARATION, AND IF CALLED TO TESTIFY AS A

12:06PM 18 WITNESS, COULD AND WOULD COMPETENTLY TESTIFY TO THEM UNDER

12:06PM 19 OATH; RIGHT?

12:06PM 20 A.   YES.

12:06PM 21 Q.   SO THAT'S SOMETHING THAT YOU DECLARED TO THE COURT THAT YOU

12:06PM 22 HAD PERSONAL KNOWLEDGE OF THE FACTS THAT ARE CONTAINED IN THAT

12:06PM 23 DECLARATION, CORRECT?

12:06PM 24 A.   THAT'S CORRECT.

12:06PM 25 Q.   AND IF WE LOOK AT THE VERY END OF EXHIBIT 250, YOU SEE THIS

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

12:07PM 1   ENDS BY SAYING, I DECLARE UNDER PENALTY OF PERJURY UNDER THE

12:07PM 2   LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE AND

12:07PM 3   CORRECT. EXECUTED THIS THIRD DAY OF FEBRUARY 2003 AT SAN JOSE,

12:07PM 4   CALIFORNIA. AND THEN THAT'S YOUR SIGNATURE, SIR?

12:07PM 5   A.   YES.

12:07PM 6   Q.   SO YOU DECLARED UNDER PENALTY OF PERJURY THAT YOU HAD

12:07PM 7   PERSONAL KNOWLEDGE OF THE FACTS THAT WERE CONTAINED IN THAT

12:07PM 8   DECLARATION, CORRECT?

12:07PM 9   A.   YES.

12:07PM 10   Q.   AND THAT WAS A TRUE STATEMENT, RIGHT?

12:07PM 11   A.   YES.

12:07PM 12   Q.   SO YOU WERE SUPER CAREFUL WHEN YOU WENT THROUGH THAT

12:07PM 13   DECLARATION AND YOU READ EVERYTHING AND YOU MADE SURE THAT YOU

12:07PM 14   UNDERSTOOD EVERYTHING THAT WAS BEING SAID, CORRECT?

12:07PM 15   A.   I DID.

12:07PM 16   Q.   BECAUSE YOU UNDERSTAND THAT PERJURY IS A SERIOUS THING,

12:07PM 17   RIGHT, SIR?

12:07PM 18   A.   INDEED.

12:07PM 19   Q.   SO NOW, LET'S LOOK AT SOME THINGS IN THE DECLARATION.

12:07PM 20   THE COURT: WELL, I DON'T WANT TO -- MAYBE THIS WOULD

12:07PM 21   THEN BE THE TIME TO STOP. I WANTED TO LET YOU LAY THE GROUND

12:07PM 22   WORK, I DON'T WANT TO INTERRUPT YOU IN THE MIDDLE.

12:07PM 23   MR. NELSON: ALL RIGHT. THANK YOU, YOUR HONOR. I

12:08PM 24   APPRECIATE THAT.

12:08PM 25   THE COURT: IT IS TIME FOR OUR LUNCH BREAK. I'M SURE

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

12:08PM 1   EVERYONE IS WATCHING THE CLOCK.

12:08PM 2   LET'S TAKE OUR ONE-HOUR LUNCH BREAK AND COME BACK AT TEN

12:08PM 3   MINUTES PAST 1:00.

12:08PM 4   (WHEREUPON A RECESS WAS TAKEN.)

12:08PM 5   (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD IN THE

01:14PM 6   PRESENCE OF THE JURY:)

01:14PM 7   THE COURT: WE HAVE ALL OF OUR JURORS HERE AND WE ARE

01:15PM 8   GOING TO GET STARTED. LET'S BRING MR. GIANCARLO BACK UP TO THE

01:15PM 9   WITNESS STAND. HERE HE COMES.

01:15PM 10   AND MR. NELSON, YOU MAY CONTINUE.

01:15PM 11   MR. NELSON: THANK YOU, YOUR HONOR.

01:15PM 12 Q.   GOOD AFTERNOON.

01:15PM 13   SO LET ME GO BACK TO EXHIBIT 250, THAT'S WHAT WE WERE

01:15PM 14 TALKING ABOUT BEFORE LUNCH, WHICH IS YOUR DECLARATION FILED IN

01:15PM 15 SUPPORT OF THE MOTION FOR PRELIMINARY INJUNCTION.

01:15PM 16   SO JUST AS LITTLE BACKGROUND, YOU UNDERSTAND THE

01:15PM 17 PRELIMINARY INJUNCTION MOTION WAS A MOTION BY CISCO TO GET

01:15PM 18 HUAWEI TO STOP USING CISCO'S INTELLECTUAL PROPERTY, RIGHT?

01:15PM 19 A.   YES.

01:15PM 20 Q.   SO THE DECLARATION YOU FILED WAS TO THE COURT IN SUPPORT OF

01:16PM 21 THAT, CORRECT?

01:16PM 22 A.   THAT'S CORRECT.

01:16PM 23 Q.   SO IN OTHER WORDS, THAT WAS WHAT THE FACTS THAT YOU, FROM

01:16PM 24 YOUR PERSONAL KNOWLEDGE THAT YOU WANTED TO GIVE THE COURT TO

01:16PM 25 CONSIDER WHEN THE COURT WAS DECIDING THE MOTION OF WHETHER

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:16PM 1   HUAWEI WAS TO STOP USING CISCO'S INTELLECTUAL PROPERTY,

01:16PM 2   CORRECT?

01:16PM 3   A.   YES.

01:16PM 4   Q.   SO -- NOW I THINK YOU SAID BEFORE THE BREAK, I WON'T SAY

01:16PM 5   THIS MORNING BECAUSE IT COULD HAVE BEEN SHORTLY AFTER NOON, BUT

01:16PM 6   BEFORE THE BREAK THAT YOU HADN'T SEEN THE COMPLAINT; IS THAT

01:16PM 7   RIGHT?

01:16PM 8   A.   I HAD NOT.

01:16PM 9   Q.   NOW I WANT TO TAKE YOU, EXHIBIT 250, AND I WANT YOU TO GO

01:16PM 10 TO PARAGRAPH 11. THIS IS YOUR DECLARATION THAT WAS SWORN UNDER

01:16PM 11 PENALTY OF PERJURY, SIR. AND IF WE BLOW UP PARAGRAPH 11, IT

01:17PM 12 SAYS, AS DETAILED IN CISCO'S COMPLAINT, HUAWEI HAS ENGAGED IN

01:17PM 13 WHOLESALE THEFT AND COPYING OF CISCO'S INTELLECTUAL PROPERTY TO

01:17PM 14 DEVELOP ITS QUIDWAY ROUTERS. ACCORDING TO CISCO'S ALLEGATIONS,

01:17PM 15 THAT THEFT INCLUDING THE ADOPTION OF CISCO'S PATENTED

01:17PM 16 PROCESSES, THE UNLAWFUL ACCESS TO AND COPYING OF CISCO'S

01:17PM 17 PROPRIETARY IOS SOURCE CODE, THE COPING OF CISCO'S CLI AND THE

01:17PM 18 COPYING OF CISCO'S COPYRIGHTED USER MANUALS.

01:17PM 19   DO YOU SEE THAT, SIR?

01:17PM 20 A.   YES, I DO.

01:17PM 21 Q.   SO IF WE GO BACK TO PARAGRAPH 1 OF YOUR DECLARATION, THAT

01:17PM 22 SAYS UNEQUIVOCALLY SIR, I HAVE PERSONAL KNOWLEDGE OF THE FACTS

01:17PM 23 SET FORTH IN THIS DECLARATION, AND IF CALLED TO TESTIFY AS A

01:18PM 24 WITNESS, COULD AND WOULD COMPETENTLY TESTIFY TO THEM UNDER

01:18PM 25 OATH, CORRECT?

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:18PM 1   A.   YES.

01:18PM 2   Q.   AND YOU DECLARED TO THE COURT, CERTAIN THINGS THAT WERE

01:18PM 3   DETAILED IN THE COMPLAINT?

01:18PM 4   A.   YES.

01:18PM 5   Q.   AND YOU ALSO SUMMARIZED FOR THE COURT CISCO'S ALLEGATIONS

01:18PM 6   IN THAT COMPLAINT, RIGHT?

01:18PM 7   A.   YES.

01:18PM 8   Q.   SO YOU MUST HAVE REVIEWED THAT COMPLAINT AND READ THAT

01:18PM 9   COMPLIANT IN ORDER TO MAKE THAT REPRESENTATION TO THE COURT,

01:18PM 10   CORRECT?

01:18PM 11   A.   I WAS ASSURED OF THESE FACTS BY THE CISCO ATTORNEYS AT THE

01:18PM 12   TIME.

01:18PM 13   Q.   SO WHAT YOU ARE SAYING IS IT'S OKAY FOR YOU TO SAY THAT YOU

01:18PM 14   HAVE PERSONAL KNOWLEDGE OF THE FACTS WHEN YOU DON'T?

01:18PM 15   A.   I HAD NO REASON TO BELIEVE THAT THE CISCO ATTORNEYS WOULD

01:18PM 16   TELL ME THAT THESE FACTS WERE IN THEIR COMPLAINT, THERE WAS NO

01:18PM 17   REASON FOR ME TO DOUBT THAT.

01:18PM 18   Q.   SO, SIR, YOU SIGNED THIS UNDER PENALTY OF PERJURY, CORRECT?

01:18PM 19   A.   THAT'S CORRECT.

01:18PM 20   Q.   AND YOU UNDERSTOOD THAT THAT WAS A SERIOUS THING, CORRECT?

01:18PM 21   A.   YES.

01:18PM 22   Q.   DO YOU THINK THAT IT'S OKAY TO SIMPLY RELY ON WHAT THE

01:18PM 23   LAWYERS TELL YOU AND THEN SIGN SOMETHING THAT SAYS THAT YOU

01:18PM 24   HAVE PERSONAL KNOWLEDGE OF THOSE FACTS?

01:19PM 25   A.   I HAD PERSONAL KNOWLEDGE THAT HUAWEI COPIED OUR SOURCE

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:19PM 1   CODE. I HAD PERSONAL KNOWLEDGE THAT IN FACT THEY COPIED

01:19PM 2   MANUALS. I HAD PERSONAL KNOWLEDGE THAT THEY COPIED THE LOOK

01:19PM 3   AND FEEL OF OUR PRODUCTS. SO I HAD PERSONAL KNOWLEDGE OF ALL

01:19PM 4   OF THAT.

01:19PM 5   I DID NOT READ THE COMPLAINT. I'M NOT AN ATTORNEY. I WAS

01:19PM 6   ASSURED THAT THOSE ARE THE THINGS -- I WAS ASSURED BY THE

01:19PM 7   ATTORNEYS THAT THOSE ARE THE THINGS THAT WERE IN THE COMPLAINT.

01:19PM 8   Q.   SO THAT ASSURANCE SATISFIED YOU THAT EVERYTHING THAT WAS

01:19PM 9   STATED IN THAT COMPLAINT WAS TRUE, ACCURATE AND FACTUAL,

01:19PM 10 CORRECT?

01:19PM 11 A.   I DID NOT STATE IN THIS DECLARATION THAT EVERYTHING IN THE

01:19PM 12 COMPLAINT WAS TRUE AND FACTUAL.

01:19PM 13 Q.   YOU SAID THAT EVERYTHING THAT WAS PUT IN THE DECLARATION

01:19PM 14 WAS OF YOUR PERSONAL KNOWLEDGE AND WAS TRUE AND FACTUAL,

01:19PM 15 CORRECT?

01:19PM 16 A.   THAT'S CORRECT.

01:19PM 17 Q.   AND YOU REFERENCED IN YOUR DECLARATION THE ALLEGATIONS IN

01:19PM 18 THE COMPLAINT, CORRECT?

01:19PM 19 A.   I REFERENCED -- YES, AS DETAILED IN THAT COMPLAINT I

01:20PM 20 REFERENCED THOSE ALLEGATIONS, CORRECT.

01:20PM 21 Q.   OKAY. SO WHATEVER ASSURANCES YOU GOT, YOU WERE SATISFIED

01:20PM 22 TO DECLARE UNDER PENALTY OF PERJURY THAT YOU HAD PERSONAL

01:20PM 23 KNOWLEDGE OF THE FACTS AND UNDERSTOOD CISCO'S ALLEGATIONS,

01:20PM 24 CORRECT?

01:20PM 25 A.   I'M GOING TO BE CLEAR. I HAD PERSONAL KNOWLEDGE THAT

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REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:20PM 1   HUAWEI HAD COPIED OUR SOFTWARE, THAT THE MANUALS WERE COPIED,

01:20PM 2   THAT THE PRODUCTS HAD THE LOOK AND FEEL. I HAD PERSONAL

01:20PM 3   KNOWLEDGE OF THOSE THINGS.

01:20PM 4   I ASSUMED, BASED ON THE ASSURANCES THAT WERE GIVEN TO ME BY

01:20PM 5   THE ATTORNEYS, THAT WHEN THEY SAID THEY PUT IT IN THE

01:20PM 6   COMPLAINT, THAT THEY PUT IT IN THE COMPLAINT.

01:20PM 7   Q.   SO SIR, WHEN YOU SAY THE LOOK AND FEEL, YOU ARE REFERRING

01:20PM 8   TO CISCO'S CLI, CORRECT?

01:20PM 9   A.   NO, I'M REFERRING TO THE ACTUAL LOOK AND FEEL OF THE

01:20PM 10   PRODUCTS THEMSELVES, THE WAY THEY LOOK, THE COLORS, WHERE THE

01:20PM 11   PORTS ARE, ET CETERA.

01:20PM 12   Q.   YOU DON'T THINK THE CASE HAD ANYTHING TO DO WITH THE CLI?

01:20PM 13   A.   NO, I DIDN'T SAY THAT, BUT IF YOU WANT TO ASK ME SPECIFIC

01:20PM 14   QUESTIONS ON THAT, I'M GLAD TO ANSWER.

01:21PM 15   Q.   WELL, THAT WAS AN ANSWER-SPECIFIC QUESTION.

01:21PM 16   I SAID YOU DON'T THINK THE HUAWEI CASE HAD ANYTHING TO DO

01:21PM 17   WITH HUAWEI'S COPYING OF CISCO'S IOS CLI?

01:21PM 18   A.   I THINK THEY COPIED IOS IN ITS ENTIRETY, INCLUDING THE CLI.

01:21PM 19   Q.   NOW SIR, CAN I TAKE YOU TO PARAGRAPH 8 OF YOUR DECLARATION?

01:21PM 20   A.   YES.

01:21PM 21   Q.   AND YOU WILL SEE THAT YOU DECLARED A KEY COMPONENT OF

01:21PM 22   CISCO'S COPYRIGHTED IOS PROGRAMS IS CISCO'S COPYRIGHTED

01:21PM 23   COMMAND-LINE INTERFACE, DEFINED AS CLI, CORRECT?

01:21PM 24   A.   THAT'S RIGHT.

01:21PM 25   Q.   AND THAT WAS A TRUE STATEMENT, CORRECT?

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:21PM 1   A.   YES.

01:21PM 2   Q.   AND THAT'S WHAT YOU AS THE TOP ENGINEER AT CISCO BELIEVED

01:21PM 3   AT THE TIME?

01:21PM 4   A.   YES.

01:21PM 5   Q.   AND THAT'S WHAT YOU UNDERSTOOD TO BE A FACT, CORRECT?

01:21PM 6   A.   YES.

01:21PM 7   Q.   AND IT GOES ON TO SAY, THE CLI IS THE INTERFACE BY WHICH

01:21PM 8   USERS COMMUNICATE WITH CISCO ROUTERS. IT CONSISTS OF AN

01:21PM 9   ELABORATE STRUCTURE OF TEXTUAL COMMANDS THAT ALLOW AN

01:22PM 10   INFORMATION TECHNOLOGY MANAGER TO CONFIGURE AND MANAGE THE

01:22PM 11   ROUTER.

01:22PM 12   DO YOU SEE THAT?

01:22PM 13   A.   YES.

01:22PM 14   Q.   AND THAT WAS A TRUE STATEMENT, CORRECT?

01:22PM 15   A.   YES.

01:22PM 16   Q.   AND THAT'S REFERRING TO THE CLI, THE USER INTERFACE,

01:22PM 17   CORRECT?

01:22PM 18   A.   THAT'S CORRECT.

01:22PM 19   Q.   AND IF I GO FORWARD TO PARAGRAPH 11 WHERE YOU REFERENCED

01:22PM 20   THE ALLEGATIONS IN THE COMPLAINT -- AND WE CAN PUT THAT UP ON

01:22PM 21   THE SCREEN, MR. FISHER. ONE OF THE THINGS YOU LIST IS THE

01:22PM 22   COPYING OF CISCO'S CLI, CORRECT?

01:22PM 23   A.   CORRECT.

01:22PM 24   Q.   SO WHAT YOU WERE REFERRING TO THERE, WHAT YOU DECLARED

01:22PM 25   UNDER PENALTY OF PERJURY TO THE COURT THAT WAS ONE OF THE

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:22PM 1   THINGS THAT HUAWEI DID WAS COPY CISCO'S USER INTERFACE,

01:22PM 2   CORRECT?

01:22PM 3   A.   THAT'S CORRECT.

01:22PM 4   Q.   THE CLI?

01:22PM 5   A.   CORRECT.

01:22PM 6   Q.   NOW IF WE GO FORWARD TO PARAGRAPH 12. IF WE GO DOWN TO THE

01:23PM 7   SECOND SENTENCE THERE, IT SAYS CISCO'S PROPRIETARY IOS IS ONE

01:23PM 8   OF THE COMPANY'S MOST VALUABLE ASSETS AND A CRITICAL COMPONENT

01:23PM 9   OF CISCO'S BUSINESS.

01:23PM 10   DO YOU SEE THAT?

01:23PM 11   A.   YES.

01:23PM 12   Q.   THE SAME HOLDS TRUE FOR THE CLI USER INTERFACE, CORRECT?

01:23PM 13   A.   YES.

01:23PM 14   Q.   SO WHAT YOU WERE SAYING THERE AND WHAT YOU WERE DECLARING

01:23PM 15   TO THE COURT, A FACT OF WHEN WHICH YOU HAD PERSONAL KNOWLEDGE,

01:23PM 16   WAS THAT THE CLI USER INTERFACE WAS ALSO ONE OF THE COMPANY'S

01:23PM 17   MOST VALUABLE ASSETS?

01:23PM 18   A.   YES.

01:23PM 19   Q.   AND THAT WAS CISCO'S BELIEF AS OF 2003, CORRECT?

01:23PM 20   A.   YES.

01:23PM 21   Q.   AND THAT WAS YOUR BELIEF AS THE TOP ENGINEER AT CISCO?

01:23PM 22   A.   YES.

01:23PM 23   Q.   NOW I WANT TO GO TO EXHIBIT 4671.

01:24PM 24   SO LET'S GO BACK TO THE COMPLAINT NOW. 4671. DO YOU HAVE

01:24PM 25   THAT?

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:24PM 1   A.   YES.

01:24PM 2   Q.   AND I WANT TO LOOK AT PARAGRAPH 12. THIS IS TOWARDS THE

01:24PM 3   BOTTOM OF PAGE 5, THEN CONTINUING TO THE TOP OF PAGE 6. ARE

01:24PM 4   YOU THERE, SIR?

01:24PM 5   A.   YES.

01:24PM 6   Q.   OKAY. THANK YOU.

01:24PM 7   IT SAYS, WHILE DEFENDANT'S CLAIM OF INTEROPERABILITY ARE

01:25PM 8   DUBIOUS, IT IS APPARENT THAT THEIR ATTEMPT TO PRODUCE A

01:25PM 9   CISCO -- IN THEIR ATTEMPT TO PRODUCE A CISCO CLONE, DEFENDANTS

01:25PM 10   ENGAGED IN WHOLESALE THEFT OF CISCO'S INTELLECTUAL PROPERTY.

01:25PM 11   DO YOU SEE THAT?

01:25PM 12   A.   YES.

01:25PM 13   Q.   AND YOU WERE SATISFIED AS THE EXECUTIVE IN CHARGE OF

01:25PM 14   INITIATING AND PURSUING THE CISCO LAWSUIT THAT THAT WAS A TRUE

01:25PM 15   AND ACCURATE STATEMENT, CORRECT?

01:25PM 16   A.   WELL, AGAIN, I DID NOT HAVE THIS DOCUMENT AT THE TIME. I'M

01:25PM 17   READING IT NOW. I'M NOT ACTUALLY SURE WHAT IT MEANS. OH, I

01:25PM 18   SEE IT, HOLD ON ONE MOMENT.

01:25PM 19   YEAH, I CAN'T SAY THAT I FULLY UNDERSTAND WHAT THIS

01:25PM 20   ACTUALLY REFERS TO.

01:25PM 21   Q.   OKAY. WELL, LET'S READ THE NEXT PART.

01:26PM 22   AND THAT NEXT PART IN THAT VERY SAME PARAGRAPH OF THE

01:26PM 23   COMPLAINT SAYS, THAT THEFT INCLUDES THE ADOPTION OF CISCO'S

01:26PM 24   PATENTED PROCESSES, THE SYSTEMATIC COPYING OF CISCO'S

01:26PM 25   COPYRIGHTED COMMAND-LINE INTERFACE, THE COPYING OF CISCO'S

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:26PM   1   PROPRIETARY IOS SOURCE CODE AND THE SYSTEMATIC COPYING OF

01:26PM   2   CISCO'S USER MANUALS.

01:26PM   3   DO YOU SEE THAT?

01:26PM   4   A.   I DO.

01:26PM   5   Q.   NOW IF I GO TO PARAGRAPH 11 OF YOUR DECLARATION, NOW I'M

01:26PM   6   BACK TO EXHIBIT 250 --

01:26PM   7   A.   YES.

01:26PM   8   Q.   AND AGAIN, THIS IS YOUR STATEMENT TO THE COURT ABOUT WHAT'S

01:26PM   9   DETAILED IN CISCO'S COMPLAINT, CORRECT?

01:26PM   10 A.   YES.

01:26PM   11 Q.   AND YOU SPECIFICALLY REFER TO, ACCORDING TO CISCO'S

01:26PM   12 ALLEGATION, THAT THEFT INCLUDES THE ADOPTION OF CISCO'S

01:26PM   13 PATENTED PROCESSES, THE UNLAWFUL ACCESS AND COPYING OF CISCO'S

01:26PM   14 PROPRIETARY IOS SOURCE CODE, THE COPYING OF CISCO'S CLI, AND

01:26PM   15 THE COPYING OF CISCO'S COPYRIGHTED USER MANUALS, CORRECT?

01:26PM   16 A.   YES.

01:27PM   17 Q.   SO THOSE ALLEGATIONS ARE FROM THE SAME PARAGRAPH THAT YOU

01:27PM   18 SAID YOU DIDN'T KNOW ANYTHING ABOUT, CORRECT?

01:27PM   19 A.   I HAD NOT REVIEWED, TO BE VERY CLEAR, I HAD NOT REVIEWED

01:27PM   20 THE COMPLAINT PRIOR TO -- PRIOR TO THIS TRIAL. I HAD NOT

01:27PM   21 REVIEWED THE COMPLAINT DURING THAT PERIOD OF TIME WE ARE

01:27PM   22 TALKING ABOUT.

01:27PM   23 Q.   BUT SIR, THEN WHY DID YOU FILE A DECLARATION UNDER --

01:27PM   24 SAYING YOU HAD PERSONAL KNOWLEDGE OF THE FACTS UNDER PENALTY OF

01:27PM   25 PERJURY WHERE YOU REFERRED SPECIFICALLY AND REPRESENTED TO THE

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:27PM 1   COURT WHAT THE ALLEGATIONS OF THE COMPLAINT WERE?

01:27PM 2   A.   I HAD PERSONAL KNOWLEDGE OF THE FACTS. I DID NOT REVIEW

01:27PM 3   THE ACTUAL COMPLAINT.

01:27PM 4   Q.   NOW LET ME GO A LITTLE BIT FORWARD IN THIS COMPLAINT. AND

01:27PM 5   YOU WILL SEE THAT THE VERY FIRST THING THAT'S DEFINED IS

01:28PM 6   CISCO'S COPYRIGHT PROTECTION.

01:28PM 7   DO YOU SEE THAT?

01:28PM 8   THIS WILL BE ON PAGE 6, MR. FISHER, OF EXHIBIT 4671. AND

01:28PM 9   THAT STARTS AT PARAGRAPH 13. ARE YOU THERE, SIR?

01:28PM 10 A.   YES.

01:28PM 11 Q.   AND YOU WILL SEE THAT TOWARDS THE BOTTOM OF PARAGRAPH 13 IT

01:28PM 12 SAYS, THE FOLLOWING CISCO'S COPYRIGHTED WORK CONSISTS OF THEIR

01:28PM 13 RESPECTIVE COMPUTER CODE, IOS SOFTWARE PROGRAMS, THE

01:28PM 14 COMMAND-LINE INTERFACE AND THE CORRESPONDING SCREEN DISPLAYS,

01:28PM 15 CLI, AND THE CORRESPONDING IOS USER MANUALS.

01:28PM 16   DO YOU SEE THAT?

01:28PM 17 A.   I DO.

01:28PM 18 Q.   SO THOSE WERE THE COPYRIGHTED WORKS BEING CLAIMED IN THE

01:28PM 19 HUAWEI CASE, CORRECT?

01:28PM 20 A.   IT SAYS SO IN THIS COMPLAINT, YES.

01:28PM 21 Q.   AND YOU AS THE EXECUTIVE IN CHARGE OF INITIATING AND

01:28PM 22 PURSUING THE CLAIMS AGAINST HUAWEI, UNDERSTOOD THAT, CORRECT?

01:29PM 23 A.   I DID NOT KNOW THESE DETAILS, NO.

01:29PM 24   AGAIN, I KNEW THEY COPIED MANUALS, I DID NOT GO THROUGH THE

01:29PM 25 PROCESS OF DOCUMENTING EACH AND EVERY MANUAL THAT THEY HAD

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:29PM 1   COPIED.

01:29PM 2   Q.   SO IF WE GO TO THE VERY NEXT SECTION, IN FACT THE FIRST

01:29PM 3   SECTION IN THE COMPLAINT SAYS, COPYING -- EXCUSE ME. THE VERY

01:29PM 4   NEXT SECTION AFTER THE COPYRIGHT PROTECTION SAYS, COPYING OF

01:29PM 5   COMMAND-LINE INTERFACE.

01:29PM 6   DO YOU SEE THAT?

01:29PM 7   A.   NO, I'M SORRY, WHAT PARAGRAPH ARE YOU TALKING ABOUT?

01:29PM 8   Q.   THIS WOULD BE RIGHT ABOVE PARAGRAPH 15.

01:29PM 9   A.   OKAY. YES, I SEE THIS.

01:29PM 10   Q.   AND THERE, IN PARAGRAPH 15, IT SAYS A KEY COMPONENT OF THE

01:29PM 11   COPYRIGHTED IOS SOFTWARE PROGRAM IS THE COMMAND-LINE INTERFACE

01:29PM 12   OR CLI --

01:29PM 13   A.   YEAH.

01:29PM 14   Q.   THE CLI IS THE USER INTERFACE BY WHICH USERS OF CISCO

01:30PM 15   ROUTERS COMMUNICATE WITH THE ROUTERS.

01:30PM 16   DO YOU SEE THAT?

01:30PM 17   A.   I DO.

01:30PM 18   Q.   SO YOU UNDERSTOOD THAT TO BE REFERRING TO THE COMMAND-LINE

01:30PM 19   INTERFACE, THE CLI, CORRECT?

01:30PM 20   A.   THAT'S CORRECT.

01:30PM 21   Q.   AND IF WE CONTINUE ON TO PAGE OR PARAGRAPH 16, RATHER, A

01:30PM 22   LITTLE BIT FATHER DOWN, IT SAYS, CISCO'S CLI IS A UNIQUE,

01:30PM 23   EXPRESSIVE WORK THAT HAS BEEN DEVELOPED OVER MANY YEARS OF

01:30PM 24   CREATIVE ENDEAVOR. OTHER MANUFACTURERS OF NETWORK ROUTERS HAVE

01:30PM 25   THEIR OWN COMMAND-LINE INTERFACES THAT DIFFER FROM CISCO'S,

975

01:30PM 1   BOTH IN TERMS OF THE PARTICULAR COMMANDS AND IN THE

01:30PM 2   ORGANIZATION OF THOSE COMMANDS.

01:30PM 3   DO YOU SEE THAT?

01:30PM 4   A.   I DO.

01:30PM 5   Q.   AND AS THE EXECUTIVE IN CHARGE OF INITIATING AND PURSUING

01:30PM 6   THE LAWSUIT, YOU UNDERSTOOD THIS TO BE REPRESENTING CISCO'S

01:30PM 7   POSITION AT THE TIME THIS COMPLAINT WAS FILED, CORRECT?

01:30PM 8   A.   NO, BECAUSE I NEVER SAW THIS COMPLAINT.

01:30PM 9   Q.   SIR, YOU DECLARED UNDER PENALTY OF PERJURY TO THE COURT

01:30PM 10   THAT YOU UNDERSTOOD THE ALLEGATIONS OF THE COMPLAINT, DIDN'T

01:31PM 11   YOU?

01:31PM 12   A.   NO. I DON'T BELIEVE I DID.

01:31PM 13   I UNDERSTOOD THAT WE WERE MAKING A COMPLAINT, I UNDERSTOOD

01:31PM 14   THAT SOME OF THE COMPLAINTS WERE -- THAT SOME OF THE COMPLAINTS

01:31PM 15   WERE THAT THEY COPIED SOURCE CODE, THEY COPIED MANUALS, THEY

01:31PM 16   COPIED OTHER ASPECTS OF THE PRODUCTS, THE CLI AS PART OF THE

01:31PM 17   IOS, BUT I DIDN'T SAY THAT I UNDERSTOOD ALL ASPECTS OF THE

01:31PM 18   COMPLAINT AGAINST HUAWEI.

01:31PM 19   Q.   YOU UNDERSTOOD THAT HUAWEI COPIED THE CLI, CORRECT?

01:31PM 20   A.   YES.

01:31PM 21   Q.   AND YOU UNDERSTOOD THAT THAT WAS A COMPLAINT -- EXCUSE

01:31PM 22   ME -- A CLAIM IN THE CASE, CORRECT?

01:31PM 23   A.   I UNDERSTOOD THAT WOULD BE A CLAIM IN THE CASE, YES.

01:31PM 24   Q.   AND YOU WERE SATISFIED FROM WHATEVER ASSURANCES YOU'VE

01:31PM 25   RECEIVED, THAT THE STATEMENTS MADE IN THE COMPLAINT ACCURATELY

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:31PM 1   REFLECTED CISCO'S POSITION AT THE TIME, CORRECT?

01:31PM 2   A.   I UNDERSTOOD THAT CISCO BELIEVED THAT THEY ACCURATELY

01:32PM 3   COVERED CISCO'S ISSUES AT THE TIME, YES.

01:32PM 4   Q.   SO IF I GO TO THE END OF THAT PARAGRAPH, IT SAYS CISCO'S

01:32PM 5   CLI REPRESENTS ITS OWN ORIGINAL EXPRESSION AS ONE WAY TO

01:32PM 6   PROVIDE THIS COMMUNICATION.

01:32PM 7   DO YOU SEE THAT?

01:32PM 8   A.   I DO.

01:32PM 9   Q.   AND YOU BELIEVE THAT THAT WAS AN ACCURATE STATEMENT OF

01:32PM 10   CISCO'S POSITION, CORRECT?

01:32PM 11   A.   IT MUST HAVE BEEN, YES.

01:32PM 12   Q.   YOU AS THE EXECUTIVE OF INITIATING AND PURSUING THE LAWSUIT

01:32PM 13   AGAINST HUAWEI, WOULD NOT HAVE ALLOWED THE COMPANY TO PURSUE

01:32PM 14   CLAIMS THAT IT DIDN'T BELIEVE, CORRECT?

01:32PM 15   A.   I WAS NOT INVOLVED IN THE CLAIMS. A CONSTRUCTION THAT

01:32PM 16   CISCO PUT TOGETHER. SO I WAS NOT IN THE POSITION TO ALLOW OR

01:32PM 17   NOT ALLOW CLAIMS TO BE MADE AGAINST HUAWEI.

01:32PM 18   I WAS -- I INITIATED THE CASE. EVERY NOW AND THEN I WOULD

01:32PM 19   REVIEW WITH THE ATTORNEYS, BUT THE ATTORNEYS WERE FULLY ENGAGED

01:33PM 20   AND FULLY RESPONSIBLE FOR PURSUING THE DETAILS OF THE CASE.

01:33PM 21   Q.   SIR, ARE YOU TELLING ME THAT THE STATEMENTS THAT I JUST

01:33PM 22   LOOKED AT CONCERNING CISCO'S ALLEGATIONS REGARDING THE CLI ARE

01:33PM 23   FALSE?

01:33PM 24   A.   I'M TELLING YOU THAT I DID NOT REVIEW THEM AT THE TIME AND

01:33PM 25   YOU ARE ASKING ME IF I BELIEVED THESE STATEMENTS AND I'M

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:33PM   1   TELLING YOU THAT I DID NOT BELIEVE THEM -- I DID NOT REVIEW

01:33PM   2   THEM AT THE TIME.

01:33PM   3   Q.   BUT YOU TOLD THE COURT THAT YOU DID?

01:33PM   4   A.   I DID NOT TELL THE COURT THAT I DID.

01:33PM   5   Q.   SO LET ME CONTINUE.

01:33PM   6   IF YOU GO TO PARAGRAPH 18 OF THE COMPLAINT, THIS IS IN THE

01:33PM   7   SAME SECTION REGARDING COPYING OF THE CLI. IT SAYS, SO MUCH OF

01:34PM   8   THE CISCO CLI IS DUPLICATED IN THE DEFENDANT'S INTERFACE, THAT

01:34PM   9   AN IT MANAGER FAMILIAR WITH THE CISCO CLI WOULD NOT HAVE TO BE

01:34PM   10 RETRAINED IN ORDER TO OPERATE ONE OF HUAWEI'S QUIDWAY ROUTERS,

01:34PM   11 SWITCHES OR PRODUCTS THAT USE VRP.

01:34PM   12   DO YOU SEE THAT?

01:34PM   13 A.   YES.

01:34PM   14 Q.   AND YOU HAVE NO REASON TO DISPUTE THAT, CORRECT?

01:34PM   15 A.   NO.

01:34PM   16 Q.   AND YOU HAVE NO REASON TO DISPUTE THAT WAS CISCO'S POSITION

01:34PM   17 AT THE TIME, RIGHT?

01:34PM   18 A.   CORRECT.

01:34PM   19 Q.   AND NOW I FINISHED THAT PARAGRAPH BY SAYING BY CHOOSING

01:34PM   20 COPYRIGHT INFRINGEMENT OVER INDEPENDENT DEVELOPMENT, DEFENDANTS

01:34PM   21 ARE ATTEMPTING TO COMPETE WITH CISCO BY STEALING CISCO'S

01:34PM   22 INNOVATIONS INSTEAD OF CREATING THEIR OWN AS WELL AS AVOIDING

01:34PM   23 THE PROCESS OF TRAINING POTENTIAL USERS IN A SEPARATE

01:34PM   24 INTERFACE.

01:34PM   25   DO YOU SEE THAT, SIR?

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REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:34PM   1   A.   YES.

01:34PM   2   Q.   AND YOU HAVE NO REASON TO DISPUTE THAT THAT WAS AN ACCURATE

01:34PM   3   STATEMENT, CORRECT?

01:34PM   4   A.   CORRECT.

01:34PM   5   Q.   NOW, IT'S THE NEXT SECTION, IN OTHER WORDS THE FOLLOWING

01:35PM   6   SECTION IN THE COMPLAINT THAT GETS INTO COPYING OF IOS SOURCE

01:35PM   7   CODE, CORRECT?

01:35PM   8   A.   YES, I SEE THAT.

01:35PM   9   Q.   SO IN CISCO'S COMPLAINT, THE COPYING OF THE COMMAND-LINE

01:35PM   10   INTERFACE WAS ACTUALLY THE VERY FIRST CLAIM THAT WAS DETAILED,

01:35PM   11   CORRECT?

01:35PM   12   A.   THAT'S WHAT I SEE NOW, YES.

01:35PM   13   Q.   NOW SIR, IF I GO BACK TO YOUR DECLARATION, AND I WANT TO GO

01:35PM   14   BACK TO PARAGRAPH 12, WE WERE LOOKING AT THAT.

01:35PM   15   A.   YES.

01:35PM   16   Q.   I WILL GO BACK UP TO WHERE WE WERE FOR THE CONTEXT, BUT

01:35PM   17   THIS IS THE PART WHERE WE SAY, CISCO'S PROPRIETARY IOS IS ONE

01:35PM   18   OF THE COMPANY'S MOST VALUABLE ASSETS AND A CRITICAL COMPONENT

01:35PM   19   OF CISCO'S BUSINESS. THE SAME HOLDS TRUE FOR THE CLI USER

01:35PM   20   INTERFACE IMPLEMENTED BY THE IOS. THIS USER INTERFACE, WHICH

01:36PM   21   IS UNIQUE TO CISCO, HAS BEEN DEVELOPED OVER MANY YEARS THROUGH

01:36PM   22   THE EXPENDITURE BY CISCO OF HUNDREDS OF MILLIONS OF DOLLARS.

01:36PM   23   DO YOU SEE IS THAT?

01:36PM   24   A.   I DO.

01:36PM   25   Q.   AND THAT WAS A TRUE STATEMENT, RIGHT?

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:36PM 1   A.   WELL, I HAVE TO SAY THAT THIS IS A POORLY WRITTEN SENTENCE.

01:36PM 2   THE WAY THAT I HAD INTERPRETED IT AT THE TIME WAS REFERRING TO

01:36PM 3   IOS SOFTWARE.

01:36PM 4   Q.   SIR, LET'S LOOK AT WHAT IT SAYS.

01:36PM 5   A.   YEAH.

01:36PM 6   Q.   IT SAYS THIS SAME HOLDS TRUE FOR THE CLI USER INTERFACE

01:36PM 7   IMPLEMENTED BY THE IOS, RIGHT?

01:36PM 8   A.   YES.

01:36PM 9   Q.   AND YOU ALREADY CONFIRMED THAT YOU UNDERSTOOD THE CLI USER

01:36PM 10   INTERFACE TO REFER TO CISCO'S CLI, CORRECT?

01:36PM 11   A.   CORRECT.

01:36PM 12   Q.   OKAY. AND THEN IT SAYS, THIS INTERFACE?

01:36PM 13   A.   YES.

01:36PM 14   Q.   RIGHT? THIS INTERFACE MEANING THE CLI USER INTERFACE,

01:36PM 15   RIGHT?

01:36PM 16   A.   YES.

01:36PM 17   Q.   IS UNIQUE TO CISCO, HAS BEEN DEVELOPED OVER MANY YEARS

01:36PM 18   THROUGH THE EXPENDITURE BY CISCO OF HUNDREDS OF MILLIONS OF

01:36PM 19   DOLLARS, CORRECT?

01:37PM 20   A.   I SEE THAT, YES.

01:37PM 21   Q.   AND YOU UNDERSTOOD THAT TO BE A FACT AT THE TIME THAT YOU

01:37PM 22   MADE THIS DECLARATION, CORRECT?

01:37PM 23   A.   WELL, TO BE CLEAR, THE ONLY THING THAT CISCO SPENT HUNDREDS

01:37PM 24   OF MILLIONS OF DOLLARS ON WAS THE SOFTWARE ITSELF, IOS

01:37PM 25   SOFTWARE. IT WOULD HAVE BEEN LITERALLY IMPOSSIBLE TO SPEND

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:37PM 1   HUNDREDS OF MILLIONS OF DOLLARS ON SIMPLY THE CLI COMMANDS. WE

01:37PM 2   DID SPEND HUNDREDS OF MILLIONS OF DOLLARS ON IOS OF WHICH THE

01:37PM 3   CLI IS A PART.

01:37PM 4   AND SO THIS SENTENCE WOULD BE NONSENSICAL IF IT REFERRED

01:37PM 5   STRICTLY TO THE CLI, WHICH IS WHY I'M SAYING IT'S POORLY

01:37PM 6   WRITTEN. I SHOULD HAVE REVIEWED IT BETTER AT THE TIME, BUT IN

01:37PM 7   TERMS OF ANYTHING THAT COULD POSSIBLY COST HUNDREDS OF MILLIONS

01:37PM 8   OF DOLLARS, IT COULD ONLY BE REFERRING TO THE SOFTWARE.

01:37PM 9   Q.   YOU SHOULD HAVE REVIEWED IT BETTER AT THE TIME; IS THAT

01:37PM 10   WHAT YOU SAID?

01:37PM 11   A.   YES.

01:37PM 12   Q.   BUT YOU TOLD THE COURT IN SUPPORT OF A MOTION TO GET HUAWEI

01:37PM 13   TO STOP USING CISCO'S IP, THAT YOU HAD PERSONAL KNOWLEDGE OF

01:38PM 14   THE FACTS SET FORTH IN THIS DECLARATION, AND IF CALLED TO

01:38PM 15   TESTIFY AS A WITNESS, COULD AND WOULD COMPETENTLY TESTIFY TO

01:38PM 16   THEM UNDER OATH, RIGHT?

01:38PM 17   A.   YES.

01:38PM 18   Q.   SO I MEAN THAT'S SOMETHING WHEN YOU SEE THAT AND YOU ARE

01:38PM 19   MAKING THAT REPRESENTATION TO THE COURT, YOU READ VERY, VERY,

01:38PM 20   VERY CAREFULLY, CORRECT?

01:38PM 21   A.   I DO.

01:38PM 22   Q.   AND IN TERMS OF BEFORE THIS LAWSUIT WAS FILED, CORRECT, AND

01:38PM 23   I'M NOW TALKING ABOUT THE PRESENT LAWSUIT, NOT THE HUAWEI

01:38PM 24   LAWSUIT, TO BE CLEAR ON THE RECORD, YOU NEVER TOOK THE POSITION

01:38PM 25   THAT CLI WAS IMPORTANT TO CISCO, CORRECT?

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:38PM 1   A.   I NEVER REALLY THOUGHT MUCH ABOUT IT SINCE LEAVING CISCO.

01:38PM 2   Q.   RIGHT. YOU NEVER TOLD ANYBODY THAT, YOU NEVER TOLD, HEY, I

01:38PM 3   KNOW I TOLD THE COURT BEFORE THAT CLI WAS UNIQUE TO CISCO, BUT

01:38PM 4   NOW I DON'T BELIEVE THAT. YOU NEVER SAID THAT, RIGHT?

01:38PM 5   A.   NO, I'M RATHER CONFUSED BY THE QUESTION.

01:39PM 6   THE CLI, TO THE EXTENT THAT IT IS IMPLEMENTED IN SOURCE

01:39PM 7   CODE, WHICH IT IS, OF COURSE THAT'S UNIQUE TO CISCO. I HAVE NO

01:39PM 8   REASON TO DOUBT THAT. CLI COMMANDS, ACTUAL WORDS, NOT

01:39PM 9   NECESSARILY.

01:39PM 10   AND THIS IS POORLY WRITTEN, BECAUSE AGAIN, I WILL JUST

01:39PM 11 STATE A FACT, WHICH IS THAT HUNDREDS OF MILLIONS -- CISCO DID

01:39PM 12 SPEND HUNDREDS OF MILLIONS OF DOLLARS DEVELOPING IOS SOURCE

01:39PM 13 CODE OF WHICH THE CLI IS A PART. WE SIMPLY DID NOT SPEND

01:39PM 14 HUNDREDS OF MILLIONS OF DOLLARS ON THE CLI, EVEN THE SOURCE

01:39PM 15 CODE, LET ALONE JUST THE COMMAND STRUCTURE WHICH WAS TRIVIAL.

01:39PM 16   SO I'M JUST STATING THE FACT THAT HUNDREDS OF MILLIONS OF

01:39PM 17 DOLLARS WAS SPENT ON IOS, AND WHEN I REVIEWED THIS DOCUMENT, I

01:39PM 18 MISSED THAT. AND, YOU KNOW, BUT THE FACTS ARE FACTS, AND AS I

01:39PM 19 SAID, HUNDREDS OF MILLIONS OF DOLLARS WERE SPENT ON IOS, BUT

01:39PM 20 NOT ON CLI.

01:39PM 21 Q.   OKAY. WELL, LET'S GO BACK TO YOUR COMPLAINT.

01:39PM 22   THIS IS EXHIBIT 4671. AND I WANT TO GO BACK TO

01:40PM 23 PARAGRAPH 15 BECAUSE THIS DEFINES WHAT CLI MEANS IN THE

01:40PM 24 COMPLAINT, RIGHT, WHICH IS, A KEY COMPONENT OF THE COPYRIGHTED

01:40PM 25 IOS SOFTWARE PROGRAMS IS THE COMMAND-LINE INTERFACE OR CLI,

01:40PM   1   CORRECT?

01:40PM   2   A.   TO BE CLEAR FIRST OF ALL, IT'S NOT MY COMPLAINT, BUT YES,

01:40PM   3   THE CLI IS PART OF THE SOFTWARE, CORRECT.

01:40PM   4   Q.   AND IT SAYS THE CLI IS THE USER INTERFACE BY WHICH USERS OF

01:40PM   5   CISCO ROUTERS COMMUNICATE WITH THE ROUTERS, CORRECT?

01:40PM   6   A.   THAT IS CORRECT.

01:40PM   7   Q.   NOW, IF WE CONTINUE THROUGH PARAGRAPH 17, YOU JUST TURN THE

01:40PM   8   PAGE, PICKING UP WITH THE FIRST FULL SENTENCE ON THAT PAGE.

01:41PM   9   A.   YES.

01:41PM   10   Q.   IT SAYS A COMPARISON OF THE COMMAND-LINE INTERFACE OF THE

01:41PM   11   OPERATING SYSTEM FOR THE QUIDWAY ROUTERS, SWITCHES AND OTHER

01:41PM   12   PRODUCTS THAT USE VRP IN CISCO'S CLI, REVEALS REPEATED

01:41PM   13   INCIDENTS OF SLAVISH COPYING.

01:41PM   14   DO YOU SEE THAT?

01:41PM   15   A.   YES.

01:41PM   16   Q.   AND TO THE BEST OF YOUR KNOWLEDGE, THAT WAS A TRUE

01:41PM   17   STATEMENT, CORRECT?

01:41PM   18   A.   YES.

01:41PM   19   Q.   FOR EXAMPLE, THE FOLLOWING CHART SHOWS TWO OF THE MANY

01:41PM   20   AREAS IN WHICH COMMANDS WERE COPIED BY THE DEFENDANTS.

01:41PM   21   DO YOU SEE THAT?

01:41PM   22   A.   YES.

01:41PM   23   Q.   IT DOESN'T TALK ABOUT THE IMPLEMENTATION, IT TALKS ABOUT

01:41PM   24   THE COMMANDS THAT WERE COPIED, CORRECT?

01:41PM   25   A.   NO.   IF YOU COPY THE SOFTWARE, THE CLI IS BY NATURE,

REDIRECT EXAMINATION OF MR. SADANA BY MR. NELSON

01:41PM 1   IDENTICAL.

01:41PM 2   Q.   WELL THEN THERE WOULD BE NO REASON IN YOUR DECLARATION TO

01:41PM 3   SEPARATE CLI, WOULD THERE? THAT WAS A COMPLETELY MISLEADING

01:41PM 4   THING TO DO TO THE COURT, WASN'T IT?

01:41PM 5   A.   NO, THE CLI IS A VERY EASY WAY TO SEE SIMILARITIES.

01:42PM 6   Q.   SO SIR, WHY THEN IS IT A SEPARATE CLAIM?

01:42PM 7   A.   YOU WOULD HAVE TO ASK THE ATTORNEYS. I WAS NOT INVOLVED IN

01:42PM 8   CLAIM CONSTRUCTION.

01:42PM 9   Q.   YOU WEREN'T INVOLVED IN WHAT?

01:42PM 10   A.   IN CONSTRUCTING THE CLAIMS AGAINST --

01:42PM 11   Q.   OH, IN CONSTRUCTING THE CLAIMS. BUT YOU WERE THE EXECUTIVE

01:42PM 12   IN CHARGE OF INITIATING AND PURSUING THE CISCO LAWSUIT AGAINST

01:42PM 13   HUAWEI, CORRECT?

01:42PM 14   A.   YES, I WAS A BUSINESS EXECUTIVE THAT URGED PURSUIT OF

01:42PM 15   HUAWEI IN A COURT CASE, WHICH DOES NOT MEAN THAT I OVERSAW IN

01:42PM 16   ANY WAY, THE LEGAL ACTIVITIES.

01:42PM 17   Q.   I UNDERSTAND THAT, SIR, BUT YOU DID FILE A DECLARATION

01:42PM 18   UNDER PENALTY OF PERJURY, DIDN'T YOU?

01:42PM 19   A.   YES.

01:42PM 20   Q.   AND YOU DID SAY THAT YOU UNDERSTOOD THE CLAIMS IN THE CASE,

01:42PM 21   CORRECT?

01:42PM 22   A.   I UNDERSTOOD AT A BUSINESS LEVEL, THE CLAIMS IN THE CASE.

01:42PM 23   Q.   AND YOU DID REFER THE COURT TO THE COMPLAINT AND REFERENCED

01:42PM 24   THAT YOU UNDERSTOOD THE ALLEGATIONS OF THE COMPLAINT, CORRECT?

01:42PM 25   A.   YES.

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:42PM   1   MR. NELSON: THANK YOU, SIR.

01:42PM   2   I HAVE NO FURTHER QUESTIONS RIGHT NOW.

01:42PM   3   THE COURT: CROSS-EXAMINATION.

01:43PM   4   MR. FERRALL: MAY I APPROACH, YOUR HONOR?

01:43PM   5   THE COURT: YES, PLEASE.

01:43PM   6

01:43PM   7   **CROSS-EXAMINATION BY MR. FERRALL**

01:43PM   8

01:43PM   9   BY MR. FERRALL:

01:43PM 10   Q.   GOOD AFTERNOON, MR. GIANCARLO.

01:43PM 11   A.   GOOD AFTERNOON.

01:43PM 12   Q.   I WOULD LIKE TO BACK UP A LITTLE BIT AND ASK YOU TO TELL

01:43PM 13   THE JURY A LITTLE BIT ABOUT YOUR BACKGROUND. I KNOW WE HEARD

01:43PM 14   THAT YOU WERE AT CISCO AND WE KNOW THAT YOU'RE A BURDEN MEMBER.

01:43PM 15   BUT CAN YOU GIVE US A LITTLE MORE HISTORY ABOUT WHERE YOU CAME

01:43PM 16   FROM AND HOW YOU GOT HERE.

01:43PM 17   A.   SURE. SURE.

01:44PM 18   I'M CHARLES GIANCARLO, I WAS EDUCATED AS AN ENGINEER. IN

01:44PM 19   FACT, I GOT A MASTER'S AT CAL. I WAS AN EARLY ENTREPRENEUR, IN

01:44PM 20   THE EARLY INTERNET BEFORE EVERYONE REALLY KNEW WHAT THE

01:44PM 21   INTERNET WAS. I DEVELOPED SEVERAL, I STARTED A COUPLE OF

01:44PM 22   COMPANIES DEVELOPING SOME OF THE FIRST HIGH SPEED

01:44PM 23   COMMUNICATIONS EQUIPMENT THAT FORMED THE BACKBONE OF THE

01:44PM 24   INTERNET.

01:44PM 25   I WAS PART OF AN EARLY TEAM AT A COMPANY, A LOCAL COMPANY

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:44PM 1   CALLED KALPANA WHERE WE DEVELOPED THE WORLD'S FIRST ETHERNET

01:44PM 2   SWITCH. AN ETHERNET SWITCH IS PRETTY MUCH WHAT MAKES THE

01:44PM 3   INTERNET WORK THESE DAYS.

01:44PM 4   THAT COMPANY, KALPANA, WAS PURCHASED BY CISCO IN 1994. I

01:44PM 5   HELD A NUMBER OF POSITIONS WHILE I WAS AT CISCO, INCLUDING AT

01:44PM 6   FIRST, GENERAL MANAGER OF THAT KALPANA ETHERNET SWITCHES

01:45PM 7   DIVISION, AND THEN I WAS PUT IN CHARGE OF WHAT'S KNOWN AS

01:45PM 8   BUSINESS DEVELOPMENT, WHICH MEANS DOING STRATEGIC PARTNERSHIPS

01:45PM 9   WITH OTHER COMPANIES, BUT ALSO MERGERS AND ACQUISITIONS.

01:45PM 10   SEVERAL YEARS LATER, I WENT BACK INTO OPERATIONS AND I RAN

01:45PM 11   ABOUT A THIRD OF CISCO'S PRODUCTS AT THAT TIME IN WHAT WAS

01:45PM 12   CALLED -- IT WAS OUR LOWER COST PRODUCTS CALLED THE COMMERCIAL

01:45PM 13   LINE OF BUSINESS.

01:45PM 14   AFTER 2001 I WAS GIVEN MORE RESPONSIBILITY AND WAS

01:45PM 15   RESPONSIBLE FOR ABOUT HALF OF CISCO'S PRODUCTS, INCLUDING THE

01:45PM 16   ONES THAT WE SOLD TO SERVICE PROVIDERS, COMPANIES LIKE AT&T,

01:45PM 17   AND VERIZON.

01:45PM 18   AND THEN IN 2003 I BECAME CTO, AND IN 2004 I BECAME

01:45PM 19   RESPONSIBLE FOR ALL OF CISCO'S PRODUCTS AT THE TIME.

01:45PM 20   I LEFT CISCO AT THE END OF --

01:45PM 21   Q.   I WAS JUST GOING TO ASK YOU THE CIRCUMSTANCES THAT -- OF

01:46PM 22   YOUR LEAVING CISCO?

01:46PM 23   A.   YEAH. I LEFT AT THE END OF 2007. I NO LONGER AGREED WITH

01:46PM 24   THE DIRECTION OF THE COMPANY AT THAT TIME AND DECIDED THAT IT

01:46PM 25   WAS BEST TO -- THE LEAD FOLLOWER GET OUT OF THE WAY, AND IT WAS

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:46PM 1   TIME FOR ME TO LEAVE.

01:46PM 2   Q.   OKAY. WHEN DID YOU JOIN ARISTA'S BOARD?

01:46PM 3   A.   2013.

01:46PM 4   Q.   SO THAT WAS HOW MANY YEARS AFTER YOU LEFT CISCO?

01:46PM 5   A.   APPROXIMATELY FIVE YEARS.

01:46PM 6   Q.   AND WHY DID YOU DECIDE TO JOIN ARISTA'S BOARD?

01:46PM 7   A.   WELL, I HAD KNOWN JAYSHREE AND ANDY FOR AT THAT POINT IN

01:46PM 8   TIME, A COUPLE OF DECADES. THESE ARE VERY TALENTED AND

01:46PM 9   HARD-WORKING AND REALLY BRILLIANT INDIVIDUALS.

01:46PM 10 Q.   CAN I JUST INTERRUPT YOU, BECAUSE THE JURY IS NOT -- HAS

01:46PM 11 NOT MET THESE PEOPLE. YOU ARE REFERRING TO JAYSHREE ULLAL?

01:46PM 12 A.   I'M REFERRING TO JAYSHREE ULLAL, THESE ARE TWO OF THE

01:46PM 13 FOUNDERS OF THE COMPANY, AND JAYSHREE ULLAL IS THE CEO, AND

01:47PM 14 ANDY BECHTOLSHEIM IS ONE OF THE FOUNDERS, AND NOW I THINK HE'S

01:47PM 15 OFFICIALLY THE CTO. BUT REALLY, A BRILLIANT INDIVIDUAL. AND I

01:47PM 16 BELIEVED IN THEM AND WHAT THEY WERE DOING AND WANTED TO SUPPORT

01:47PM 17 THEM.

01:47PM 18 Q.   WHAT ARE YOUR RESPONSIBILITIES AS A BOARD MEMBER?

01:47PM 19 A.   WELL, AS A BURDEN MEMBER OF ANY COMPANY, AND CERTAINLY A

01:47PM 20 PUBLIC COMPANY, YOUR PRIMARY RESPONSIBILITY IS TO LOOK OUT FOR

01:47PM 21 THE INTERESTS OF THE SHAREHOLDERS OF THE COMPANY. THAT'S FIRST

01:47PM 22 AND FOREMOST. AND AS PART OF THAT, YOU HELP BOTH WITH RESPECT

01:47PM 23 TO GOVERNANCE OF THE COMPANY, THAT IS TO TAKE SURE IT DOES THE

01:47PM 24 RIGHT THINGS BY THE SHAREHOLDERS.

01:47PM 25   AND SECONDLY, IT'S IMPORTANT OF COURSE TO WORK WITH THE

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:47PM   1   MANAGEMENT TEAM ON THE OVER ALL STRATEGY OF THE COMPANY TO

01:47PM   2   MAKER SURE THAT YOU BELIEVE THAT THE STRATEGY THEY ARE PURSUING

01:47PM   3   IS THE BEST FOR THE COMPANY'S EMPLOYEES, CUSTOMERS AND THE

01:47PM   4   SHAREHOLDERS.

01:47PM   5   Q.   AND LET'S JUST TURN TO THE CLI, WHILE YOU WERE AT CISCO,

01:48PM   6   DID YOU COME TO LEARN ABOUT CISCO'S COMMAND-LINE INTERFACE?

01:48PM   7   A.   WELL, ACTUALLY, BEFORE CISCO, I MEAN EVERY COMPANY THAT HAS

01:48PM   8   COMMUNICATIONS EQUIPMENT, THAT EQUIPMENT IS MANAGED WITH, AT

01:48PM   9   THE VERY LEAST, A COMMAND-LINE INTERFACE, AND I HAD KNOWN ABOUT

01:48PM   10   CISCO'S EVEN BEFORE JOINING CISCO.

01:48PM   11   Q.   AND AT OR BEFORE THE TIME OF THE HUAWEI LITIGATION, WERE

01:48PM   12   YOU AWARE OF ANY COMPETITORS OF CISCO WHO WERE USING CISCO'S

01:48PM   13   CLI COMMANDS?

01:48PM   14   A.   CERTAINLY. A NUMBER OF COMPETITORS WERE USING COMMANDS

01:48PM   15   THAT WERE THE SAME OR SIMILAR TO CISCO'S CLI COMMANDS. AND WE

01:48PM   16   KNEW THAT TOWARDS THE MID TO LATE 90'S.

01:48PM   17   Q.   HOW DID YOU COME TO LEARN THAT?

01:48PM   18   A.   IT WAS GENERAL KNOWLEDGE AND DISCUSSED FREQUENTLY.

01:48PM   19   Q.   LET ME ASK YOU TO OPEN UP YOUR BINDER AND LOOK AT

01:49PM   20   EXHIBIT 8966. CAN YOU TELL US WHAT THAT IS?

01:49PM   21   A.   YES, IT'S A POWERPOINT DOCUMENT THAT'S A REVIEW OF OUR --

01:49PM   22   OF ONE OF OUR SWITCHING PRODUCT LINES AT THE COMPANY AT THE

01:49PM   23   TIME.

01:49PM   24   Q.   AND BASED UPON YOUR ROLE AT CISCO AT THE TIME, WOULD YOU

01:49PM   25   HAVE SEEN A DOCUMENT SUCH AS THAT?

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:49PM 1   A.   YES, I WOULD HAVE BEEN INVOLVED IN ALL THE REVIEWS OF OUR

01:49PM 2   SWITCHING PRODUCT LINES AT THAT TIME. AND IN THESE MEETINGS WE

01:49PM 3   REVIEW OUR COMPETITIVENESS AGAINST THE REST OF THE MARKET. WE

01:49PM 4   LOOK AT OUR COMPETITORS AND HOW THEY'RE DOING, AND WE LOOK AT

01:49PM 5   OUR OWN PRODUCTS AND UNDERSTANDING WHAT WE ARE DOING WELL AND

01:49PM 6   WHAT WE ARE NOT DOING WELL AND HOW TO DO BETTER.

01:49PM 7   MR. FERRALL: YOUR HONOR, I WOULD OFFER EXHIBIT 8966

01:49PM 8   INTO EVIDENCE.

01:49PM 9   MR. NELSON: NO OBJECTION.

01:49PM 10   THE COURT: IT WILL BE ADMITTED.

01:49PM 11   (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 8966, HAVING BEEN

01:49PM 12   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

01:50PM 13   EVIDENCE.)

01:50PM 14   BY MR. FERRALL:

01:50PM 15   Q.   SO CAN YOU TELL US WHAT THE CATALYST 6500 IS?

01:50PM 16   A.   YES. THAT WAS CISCO'S MOST ADVANCED, WHAT WE CALL OUR

01:50PM 17   HIGHEST END SWITCHING PRODUCT.

01:50PM 18   Q.   AND TO PUT THIS IN CONTEXT, YOU MAY HAVE SAID THIS ALREADY,

01:50PM 19   BUT WHAT YEAR ARE WE IN HERE?

01:50PM 20   A.   YEAH. THIS DOCUMENT APPEARS TO BE TOWARDS THE END OF 2002.

01:50PM 21   LIKE THE FOURTH, ROUGHLY THE FOURTH QUARTER, ROUGHLY THIS TIME

01:50PM 22   OF YEAR IN 2002.

01:50PM 23   Q.   AND AGAIN FOR CONTEXT, WHAT WAS THE YEAR OF THE HUAWEI

01:50PM 24   LITIGATION?

01:50PM 25   A.   2003.

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:50PM 1   Q.   AND IF YOU COULD TURN TO SLIDE 10 OF THIS EXHIBIT. BRIEFLY

01:50PM 2   EXPLAIN WHAT IS BEING SHOWN ON THIS SLIDE?

01:50PM 3   A.   YEAH, THIS IS A SHORTHAND SLIDE OR FAST QUICK REVIEW OF THE

01:50PM 4   MAJOR COMPETITORS THAT CISCO HAD IN THE LOCAL AREA NETWORK

01:51PM 5   MARKETPLACE. COMPANIES, IF YOU WILL, THAT HAD PRODUCTS THAT

01:51PM 6   COMPETED WITH THE CATALYST 6500.

01:51PM 7   Q.   THE LOCAL AREA NETWORK MARKET BEING A MARKET FOR WHAT SORT

01:51PM 8   OF PRODUCTS?

01:51PM 9   A.   THE LAN SWITCHES, LOCAL AREA NETWORKS, ETHERNET SWITCHES.

01:51PM 10   Q.   ETHERNET SWITCHES. AND I SEE TWO LINES THERE THAT SAY TIER

01:51PM 11   1 AND TIER 2, CAN YOU EXPLAIN WHAT THOSE MEAN?

01:51PM 12   A.   YES. A TIER 1 COMPETITOR WOULD BE A COMPETITOR THAT

01:51PM 13   COMPETED DIRECTLY WITH THE 6500 WITH A PRODUCT THAT WAS VERY

01:51PM 14   COMPETITIVE IN THAT SPACE, HIGHLY FEATURED, YOU KNOW, AMONG THE

01:51PM 15   MOST CAPABLE IN THE INDUSTRY.

01:51PM 16   TIER 2 WOULD HAVE BEEN A LESS EXPENSIVE PRODUCT, TYPICALLY

01:51PM 17   LESSER FEATURED, MAYBE NOT BEING ABLE TO HANDLE AS MUCH

01:51PM 18   INTERNET TRAFFIC, BUT LOWER PRICED AS WELL. IT WOULD HAVE SOLD

01:51PM 19   INTO A LOWER END PART OF THE MARKET, PARTS OF THE MARKET THAT

01:52PM 20   DIDN'T REQUIRE HIGH END FEATURES.

01:52PM 21   Q.   AND THE FIRST COMPANY LISTED THERE UNDER TIER 1 IT SAYS

01:52PM 22   FOUNDRY, WHO IS FOUNDRY?

01:52PM 23   A.   FOUNDRY NETWORKS WAS A COMPETITOR AT THE TIME.

01:52PM 24   Q.   CAN YOU LOOK AT THE ENTRY UNDER FOUNDRY FOR COMMANDS

01:52PM 25   TYPICALLY STRATEGY.

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:52PM 1   AND WHAT DOES THAT SAY?

01:52PM 2   A.   IT SAYS INCREASING ENTERPRISE SALES, LOW COST ALTERNATIVE,

01:52PM 3   "SAME AS CISCO," COPIES CLI FROM IOS.

01:52PM 4   Q.   ARE YOU SURPRISED, AS YOU SIT HERE TODAY, TO SEE A CISCO

01:52PM 5   DOCUMENT REFERRING TO A COMPANY COPYING CLI FROM IOS?

01:52PM 6   A.   NO.

01:52PM 7   Q.   WHY IS THAT?

01:52PM 8   A.   AS I SAID, FROM THE MID TO LATE 90'S ON, THERE WERE A

01:52PM 9   NUMBER OF COMPETITORS THAT HAD VERY SIMILAR COMMAND LINES, IF

01:52PM 10 NOT IN MANY CASES, NOT FULLY, BUT PARTIALLY IDENTICAL TO

01:53PM 11 CISCO'S COMMAND LINE COMMANDS.

01:53PM 12 Q.   DID YOU EVER URGE CISCO TO CALL UP FOUNDRY AND TELL THEM

01:53PM 13 THEY CAN'T COPY CLI FROM IOS?

01:53PM 14 A.   NO.

01:53PM 15 Q.   WHY NOT?

01:53PM 16 A.   WE -- IT WAS OUR UNDERSTANDING, AGAIN, FROM THE LATE 90'S

01:53PM 17 ON, THAT THE CLI COMMANDS WERE NOT PROTECTABLE.

01:53PM 18 Q.   AND WHAT WAS THAT UNDERSTANDING BASED ON?

01:53PM 19 A.   GENERAL KNOWLEDGE, COMMENTS FROM SENIOR MANAGEMENT AT CISCO

01:53PM 20 THAT CLI COMMANDS THEMSELVES WERE NOT PROTECTABLE.

01:53PM 21 Q.   NOW LET ME TURN TO THE DISPUTE WITH HUAWEI, EXPLORE THAT A

01:53PM 22 LITTLE BIT MORE.

01:53PM 23   CAN WE BACK UP A LITTLE BIT AND EXPLAIN TO THE JURY THE

01:54PM 24 CIRCUMSTANCES THAT LEAD CISCO TO ULTIMATELY SUE HUAWEI.

01:54PM 25 A.   YES.   EARLY IN THE 2000-DECADE, 2000, 2001, ROUGHLY AROUND

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:54PM 1   THAT TIME PERIOD, IT HAD COME TO OUR ATTENTION NATURALLY

01:54PM 2   THROUGH OUR SALES FORCE THAT HUAWEI WAS SELLING A SET OF

01:54PM 3   ROUTERS, ACTUALLY ACCESS ROUTERS IN CHINA THAT WERE LITERALLY

01:54PM 4   IDENTICAL TO CISCO PRODUCTS, I MEAN, WHEN YOU LOOKED AT THEM,

01:54PM 5   THEY LOOKED EXACTLY THE SAME, IN ADDITION TO THE WAY THEY

01:54PM 6   FUNCTIONED.

01:54PM 7   SO AS YOU MIGHT EXPECT, AND LIKE EVERY OTHER COMPETITOR, WE

01:54PM 8   BOUGHT SOME OF THOSE PRODUCTS, TOOK THEM IN HOUSE AND STARTED

01:54PM 9   DOING THIS COMPETITIVE TESTING ON IT.

01:54PM 10   AND WHAT WE DISCOVERED WAS NOT ONLY DID THEY LOOK LIKE OUR

01:54PM 11   PRODUCTS BUT THEY ACTED ALMOST IDENTICAL TO OUR PRODUCTS, IN

01:54PM 12   FACT, THEY HAD SOMETHING WE LEARNED OVER TIME IN TESTING WHICH

01:54PM 13   WE CALL BUG COMPATIBILITY, MEANING THEY WERE NOT ONLY THE SAME

01:54PM 14   AS OUR PRODUCTS, BUT THEY HAD EXACTLY THE SAME BUGS THAT OUR

01:55PM 15   PRODUCTS HAD.

01:55PM 16   AND IF YOU ARE ANOTHER MANUFACTURER, YOU DON'T COPY BUGS.

01:55PM 17   IF YOU ARE WRITING YOUR OWN SOFTWARE, YOU ARE NOT COPYING BUGS.

01:55PM 18   SO FOR US IT BECAME CLEAR, AND ESPECIALLY AFTER MORE TESTING,

01:55PM 19   THAT THEY HAD COPIED OUR SOFTWARE.

01:55PM 20   AND SO STARTING, I BELIEVE IN 2001, POSSIBLY EARLY 2002, I

01:55PM 21   STARTED MAKING A NUMBER OF TRIPS TO CHINA, FIRST WITH THE

01:55PM 22   CHINESE AUTHORITIES MINISTRY OF INDUSTRY AND OTHERS, AND THEN

01:55PM 23   EVENTUALLY -- WELL, I MET WITH THEM, THEY URGED ME TO SPEAK

01:55PM 24   WITH HUAWEI ABOUT THIS.

01:55PM 25   Q.   AND LET ME JUST STOP YOU BEFORE WE GO THERE, DID CISCO EVER

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:55PM 1   COME TO LEARN APPROXIMATELY HOW MUCH OF ITS SOURCE CODE HUAWEI

01:55PM 2   HAD COPIED?

01:55PM 3   A.   WE BELIEVED SUBSTANTIALLY ALL, CERTAINLY MORE THAN

01:55PM 4   90 PERCENT. MINOR MODIFICATIONS.

01:56PM 5   Q.   YOU MADE SOME TRIPS TO ASIA FOR THIS?

01:56PM 6   A.   YES.

01:56PM 7   Q.   AND WHO WENT WITH YOU ON THOSE TRIPS TO ASIA?

01:56PM 8   A.   WELL, IT WAS SEVERAL DIFFERENT TRIPS. AND SEVERAL

01:56PM 9   DIFFERENT PEOPLE AT DIFFERENT TIMES. BUT GENERAL COUNSEL AT

01:56PM 10   TIMES, THEY HAD STRATEGY AT TIMES, CERTAINLY THE HEAD OF CHINA

01:56PM 11   AND ASIA.

01:56PM 12   Q.   AND WHAT WERE THE RESULTS OF THOSE VARIOUS TRIPS TO ASIA?

01:56PM 13   A.   WHEN I MET WITH THE CHINESE AUTHORITIES THEY ENCOURAGED ME

01:56PM 14   OVER TIME -- THEIR FIRST ASSERTION WAS THAT THEY BELIEVED VERY

01:56PM 15   MUCH IN PROTECTING INTELLECTUAL PROPERTY AND THEY WANTED US TO

01:56PM 16   KNOW THAT THEY WOULD BE SUPPORTIVE OF PROTECTION OF OUR

01:56PM 17   INTELLECTUAL PROPERTY. THEY ENCOURAGED US TO SPEAK WITH HUAWEI

01:56PM 18   DIRECTLY.

01:56PM 19   WE SET UP SEVERAL MEETINGS WITH HUAWEI IN THEIR HOME CITY,

01:56PM 20   WHICH IS OUTSIDE OF HONG KONG, AND I MET WITH THE CEO, AND THE

01:57PM 21   CHIEF OPERATING OFFICER OF HUAWEI ON TWO OR THREE OCCASIONS IN

01:57PM 22   SHANG ZHEN, WHICH IS THAT CITY OUTSIDE OF HONG KONG, AT WHICH

01:57PM 23   TIME WE BROUGHT TO THEIR ATTENTION THE FACT THAT WE BELIEVE

01:57PM 24   STRONGLY THAT THEY HAD COPIED OUR SOURCE CODE.

01:57PM 25   Q.   AND WERE YOU ABLE TO REACH ANY RESOLUTION WITH HUAWEI?

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:57PM 1   A.   UNFORTUNATELY NOT. THEY DENIED USE OF ANY OF OUR SOURCE

01:57PM 2   CODE.

01:57PM 3   Q.   NOW IN THOSE MEETINGS THAT YOU HAD WITH HUAWEI, DID YOU

01:57PM 4   EVER DEMAND THAT HUAWEI CHANGE ITS CLI COMMANDS?

01:57PM 5   A.   NO. THE FOCUS WAS ON THEM STOPPING USE OF OUR SOURCE CODE.

01:57PM 6   Q.   IN YOUR VIEW, WOULD YOU HAVE URGED CISCO TO FILE A LAWSUIT

01:57PM 7   AGAINST HUAWEI IF THE ONLY THING YOU SAW THAT WAS SIMILAR WERE

01:57PM 8   CLI COMMANDS?

01:57PM 9   A.   NO.

01:57PM 10   Q.   NOW I WANT TO ASK YOU A COUPLE OF QUESTIONS ABOUT YOUR

01:58PM 11   DECLARATION. DID YOU WRITE THE DECLARATION THAT CISCO SHOWED

01:58PM 12   YOU AND ASKED YOU ABOUT?

01:58PM 13   A.   I DID NOT.

01:58PM 14   Q.   WHO DID?

01:58PM 15   A.   CISCO ATTORNEYS.

01:58PM 16   Q.   DID YOU DECIDE WHAT TO PUT INTO THAT DECLARATION?

01:58PM 17   A.   I DID NOT.

01:58PM 18   Q.   WHO DECIDED THAT, TO YOUR KNOWLEDGE?

01:58PM 19   A.   CISCO ATTORNEYS.

01:58PM 20   Q.   I THINK YOU MADE THIS CLEAR, BUT DID YOU HAVE ANY

01:58PM 21   INVOLVEMENT WHATSOEVER IN DECIDING WHAT LEGAL CLAIMS TO BRING

01:58PM 22   AGAINST HUAWEI?

01:58PM 23   A.   I DID NOT.

01:58PM 24   Q.   LET'S CALL UP THAT EXHIBIT, WHICH IS EXHIBIT 250. AND

01:59PM 25   LET'S FOCUS ON THE BOTTOM LEFT CORNER. YOU ARE AWARE,

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

01:59PM   1   MR. GIANCARLO, THAT THE DECLARATION WAS FILED UNDER SEAL?

01:59PM   2   A.   I AM.

01:59PM   3   Q.   AND WAS THAT YOUR DECISION?

01:59PM   4   A.   NO.

01:59PM   5   Q.   WHOSE DECISION WAS THAT?

01:59PM   6   A.   CISCO ATTORNEYS, I ASSUME.

01:59PM   7   Q.   DO YOU KNOW WHY CISCO CHOSE TO FILE THIS DECLARATION UNDER

01:59PM   8   SEAL?

01:59PM   9   A.   I DO NOT.

01:59PM   10   Q.   ARE YOU AWARE OF THE DECLARATION EVER BECOMING PUBLIC AFTER

01:59PM   11   THE TIME IT WAS SEALED UNTIL THIS LITIGATION?

01:59PM   12   A.   I AM NOT.

01:59PM   13   Q.   WHILE AT CISCO, DID YOU EVER SHARE THIS DECLARATION OUTSIDE

01:59PM   14   OF CISCO?

01:59PM   15   A.   NO, AND I HAD NO ACCESS TO IT.

01:59PM   16   Q.   DID YOU EVER DISCUSS THIS DECLARATION WITH ANYONE OUTSIDE

01:59PM   17   OF CISCO?

01:59PM   18   A.   I DID NOT.

01:59PM   19   Q.   DID YOU EVER DISCUSS IT WITH ANYONE AT ARISTA?

02:00PM   20   A.   NO.

02:00PM   21   Q.   HAVE YOU EVER DISCUSSED THE HUAWEI LITIGATION WITH ANYONE

02:00PM   22   AT ARISTA BEFORE THIS LAWSUIT WAS FILED, AT LEAST?

02:00PM   23   A.   NO.

02:00PM   24   Q.   NOW ONE MORE QUESTION, BACK TO THE COMPETITORS THAT HAD

02:00PM   25   SIMILAR CLI, WAS THERE -- WHAT, IF ANY, BUSINESS REASON DID

995

CROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

02:00PM 1   CISCO HAVE FOR NOT CALLING UP COMPANIES LIKE FOUNDRY AND

02:00PM 2   TELLING THEM NOT TO USE OR COPY CISCO'S CLI?

02:00PM 3   A.   WELL, AGAIN, IT WAS OUR BELIEF, BASED ON ASSERTIONS WE HAD

02:00PM 4   FROM CISCO MANAGEMENT AND REPEATED OVER AS WE DISCUSSED SUCH

02:00PM 5   THINGS, THAT THE CLI WAS NOT PROTECTABLE.

02:00PM 6   GIVEN IN THE LATE 1990'S, AS I SAID, WE BELIEVED IT WAS NOT

02:00PM 7   PROTECTABLE. WE SAID WELL, IF WE CAN'T PROTECT IT THEN LET'S

02:01PM 8   USE IT, WE MIGHT AS WELL SAY IT'S A STANDARD, IF OTHERS ARE

02:01PM 9   USING IT AS WELL AND CAN CLAIM TO BE, LET'S SAY, STANDARD AND

02:01PM 10 OPEN, WHICH IS AN ADVANTAGE IN AND OF ITSELF

02:01PM 11 Q.   WHY IS THAT, WHY WOULD THAT BE AN ADVANTAGE TO CISCO?

02:01PM 12 A.   CUSTOMERS, AS YOU MIGHT IMAGINE, DON'T LIKE TO BE LOCKED IN

02:01PM 13 TO A SPECIFIC VENDOR. THEY WANT THE ABILITY TO MIX VENDORS,

02:01PM 14 THEY WANT THE ABILITY IF THEY DON'T LIKE THE VENDOR, TO ONE DAY

02:01PM 15 TO BE ABLE TO MOVE TO ONE VENDOR TO ANOTHER.

02:01PM 16   AND TO THE EXTENT THAT A PRODUCT INTEROPERATES WITH OTHER

02:01PM 17 PRODUCTS, THAT IS MORE OPEN, IT'S MORE STANDARD, IT MAKES IT

02:01PM 18 EASIER FOR CUSTOMERS TO MOVE FROM ONE VENDOR TO ANOTHER VENDOR.

02:01PM 19   AND SO IN SELLING AND MARKETING TO CUSTOMERS, A LOT OF

02:01PM 20 TIMES THEY WANT TO KNOW THAT YOU ARE STANDARD AND OPEN.

02:01PM 21   AND SO BY IDENTIFYING OUR CLI COMMANDS AS BEING STANDARD,

02:02PM 22 INDUSTRY STANDARD, IT INDICATES THAT WE WERE MORE OPEN AND

02:02PM 23 THEREFORE CUSTOMERS WOULD BE MORE COMFORTABLE BUYING FROM US.

02:02PM 24 Q.   NOW, YOU STILL KNOW EXECUTIVES AT CISCO, I TAKE IT?

02:02PM 25 A.   I DO, YES.

REDIRECT EXAMINATION OF MR. GIANCARLO BY MR. NELSON

02:02PM 1   Q.   YOU KEEP IN CONTACT WITH THEM PERIODICALLY?

02:02PM 2   A.   YES.

02:02PM 3   Q.   AND THEY'RE AWARE THAT YOU ARE ON ARISTA'S BOARD, RIGHT?

02:02PM 4   A.   WELL, YES, IT'S PUBLIC INFORMATION, AND I EVEN RECEIVED A

02:02PM 5   FEW COMPLIMENTARY E-MAILS WHEN I JOINED, SO YES.

02:02PM 6   Q.   NOW BEFORE CISCO SUED ARISTA IN THIS CASE, DID ANYONE FROM

02:02PM 7   CISCO INVITE YOU TO ENGAGE IN THE SORT OF DISCUSSIONS THAT YOU

02:02PM 8   ENGAGED WITH HUAWEI BEFORE CISCO SUED HUAWEI?

02:02PM 9   A.   NO.

02:02PM 10   Q.   DID YOU KNOW ABOUT THIS LAWSUIT BEING FILED BEFORE IT WAS

02:02PM 11   FILED?

02:02PM 12   A.   OH, NO.

02:02PM 13   MR. FERRALL: NO FURTHER QUESTIONS.

02:02PM 14   THANK YOU, MR. GIANCARLO.

02:02PM 15   THE COURT: MR. NELSON, ANY FOLLOW UP?

02:02PM 16   MR. NELSON: JUST A LITTLE BIT, YOUR HONOR.

02:02PM 17   THE COURT: SURE.

02:02PM 18

02:02PM 19   **REDIRECT EXAMINATION BY MR. NELSON**

02:02PM 20

02:02PM 21   BY MR. NELSON:

02:03PM 22   Q.   CAN WE GO BACK TO EXHIBIT 250, SIR. THAT'S YOUR

02:03PM 23   DECLARATION.

02:03PM 24   A.   YES.

02:03PM 25   Q.   AND IN PARAGRAPH 12 OF THAT DECLARATION, I WILL WAIT UNTIL

REDIRECT EXAMINATION OF MR. GIANCARLO BY MR. NELSON

02:03PM   1   YOU GET THERE --

02:03PM   2   A.   YES.

02:03PM   3   MR. PAK: YOUR HONOR, MR. NELSON, I THINK THE JURY

02:03PM   4   CAN'T SEE --

02:03PM   5   THE COURT: LET'S TURN THIS ON FOR THE JURY.   DO WE

02:03PM   6   HAVE IT?   GOOD.

02:03PM   7   MR. NELSON: I KEEP FORGETTING THAT.   IT'S OKAY NOW?

02:03PM   8   THANK YOU.

02:03PM   9   MAY I PROCEED, YOUR HONOR?

02:03PM   10   THE COURT: YES.

02:03PM   11   BY MR. NELSON:

02:03PM   12   Q.   SO IN PARAGRAPH 12, YOU SAY THE CLI USER INTERFACE IS

02:03PM   13   UNIQUE TO CISCO, RIGHT?

02:03PM   14   A.   YES.

02:03PM   15   Q.   AND THAT WAS A TRUE STATEMENT, RIGHT?

02:03PM   16   A.   YES.

02:03PM   17   Q.   YOU ALSO, IN YOUR DECLARATION, GOING BACK TO PARAGRAPH 8,

02:03PM   18   THIS WOULD BE PAGE 2, YOU SAY A KEY COMPONENT OF CISCO'S

02:04PM   19   COPYRIGHTED IOS PROGRAMS IS CISCO'S COPYRIGHTED COMMAND-LINE

02:04PM   20   INTERFACE, RIGHT?

02:04PM   21   A.   I DO.

02:04PM   22   Q.   AND YOU UNDERSTOOD COPYRIGHTED MEANT PROTECTED, CORRECT?

02:04PM   23   A.   YES.

02:04PM   24   Q.   SO YOU SAID, IN YOUR DECLARATION TO THE COURT, WHERE YOU

02:04PM   25   DECLARED YOU HAD PERSONAL KNOWLEDGE OF THE FACTS, THAT CISCO'S

REDIRECT EXAMINATION OF MR. GIANCARLO BY MR. NELSON

02:04PM 1   COMMAND-LINE INTERFACE WAS PROTECTED, CORRECT?

02:04PM 2   A.   YES.

02:04PM 3   Q.   NOW SIR, I THINK I ASKED YOU THIS QUESTION BEFORE, BUT

02:04PM 4   SINCE 2003, YOU NEVER TOLD ANYONE PUBLICLY THAT YOU DIDN'T

02:04PM 5   ACTUALLY BELIEVE CISCO'S COMMAND-LINE INTERFACE WAS COPYRIGHTED

02:04PM 6   AND PROTECTED, CORRECT?

02:04PM 7   A.   I THINK WE ARE USING COMMAND-LINE INTERFACE IN TWO

02:04PM 8   DIFFERENT SENSES, AND IT'S VERY IMPORTANT TO, I THINK,

02:04PM 9   DIFFERENTIATE WHAT COMMAND-LINE INTERFACE MEANS.

02:04PM 10   WHEN YOU TALK TO THE ENGINEERS ABOUT COMMAND-LINE

02:04PM 11 INTERFACE, IT MEANS THE ENTIRE STRUCTURE, IT MEANS ALL THE

02:05PM 12 SOFTWARE THAT GOES INTO MAKING THAT UP, IT MEANS THE PARSER

02:05PM 13 THAT'S INVOLVED IN FILTERING THE COMMAND-LINE INTERFACE

02:05PM 14 COMMANDS, IT MEANS THE RESPONSES THAT THE DIFFERENT MODULES OF

02:05PM 15 IOS PROVIDE BACK TO THE USER, AND IT ALSO MEANS THE COMMANDS

02:05PM 16 THEMSELVES.

02:05PM 17   AND SO WHEN I SAY IT'S A KEY COMPONENT OF CISCO'S

02:05PM 18 COPYRIGHTED PROGRAMS, I ACTUALLY, YOU KNOW, MY INTERPRETATION

02:05PM 19 OF THAT WHEN I SIGNED IT, IS THAT THE PART OF THE SOFTWARE OF

02:05PM 20 IOS SOFTWARE MAKES UP THE COMMAND-LINE INTERFACE.

02:05PM 21   WHEN -- I HAVE, SINCE THE LATE 90'S, UNDERSTOOD, SPOKEN

02:05PM 22 ABOUT AND BELIEVED THAT THE COMMANDS THEMSELVES ARE NOT

02:05PM 23 PROTECTABLE.

02:05PM 24   SO WHEN, YOU KNOW, IT TURNS OUT THAT PEOPLE WILL USE

02:06PM 25 COMMAND-LINE INTERFACE TO MEAN DIFFERENT PARTS OF THAT AT

REDIRECT EXAMINATION OF MR. GIANCARLO BY MR. NELSON

02:06PM   1   DIFFERENT TIMES. WHEN I TALK ABOUT THE COMMAND-LINE INTERFACE,

02:06PM   2   I MEAN ALL OF IT TOGETHER.

02:06PM   3   Q.   SIR, YOU DIDN'T SAY ALL THAT TO THE COURT, DID YOU?

02:06PM   4   A.   I TRIED TO.

02:06PM   5   Q.   AND WE LOOKED TO THE COMPLAINT WHICH YOU SAID YOU

02:06PM   6   UNDERSTOOD THE ALLEGATIONS, AND THE COMPLAINT REFERRED TO THE

02:06PM   7   COMMANDS, CORRECT?

02:06PM   8   A.   I CAN'T SPEAK TO THE WAY THE COMPLAINT WAS WRITTEN.

02:06PM   9   Q.   BUT YOU REFERRED THE COURT TO THE COMPLAINT. AND YOU

02:06PM   10   DEFINED THE COMMAND-LINE INTERFACE AS BEING THE COMMANDS?

02:06PM   11   A.   I DID.

02:06PM   12   Q.   AND YOU TOLD THE COURT --

02:06PM   13   A.   WELL, NO, NO, NO, TO BE CLEAR, I DID NOT REFER TO THE

02:06PM   14   COMMAND-LINE INTERFACE AS BEING THE COMMANDS. YOU ARE SAYING

02:06PM   15   THE COMPLAINT DID.

02:06PM   16   Q.   CORRECT.

02:06PM   17   A.   WHICH I DID NOT REVIEW AT THE TIME.

02:06PM   18   Q.   AND YOU REFERRED THE COURT TO THE COMPLAINT AND REPRESENTED

02:06PM   19   TO THE COURT THAT YOU UNDERSTOOD THE ALLEGATIONS IN THE

02:06PM   20   COMPLAINT?

02:06PM   21   A.   I DID -- I DIDN'T SAY AS TO THE ALLEGATIONS IN THE

02:06PM   22   COMPLAINT, I REFERRED TO THE ALLEGATIONS IN THE COMPLAINT,

02:07PM   23   CORRECT.

02:07PM   24   Q.   AND YOU -- YOU WERE THE EXECUTIVE IN CHARGE OF INITIATING

02:07PM   25   AND PURSUING THE LAWSUIT AGAINST HUAWEI, RIGHT?

REDIRECT EXAMINATION OF MR. GIANCARLO BY MR. NELSON

02:07PM 1   A.   I WAS.

02:07PM 2   Q.   AND YOU UNDERSTOOD, SIR, YOU UNDERSTAND AS PART OF THE

02:07PM 3   RESOLUTION OF THAT HUAWEI CHANGED THEIR COMMANDS, CORRECT?

02:07PM 4   A.   I UNDERSTAND THAT, YES.

02:07PM 5   Q.   OKAY. SO THEY CHANGED THEIR COMMAND, THAT WAS PART OF THE

02:07PM 6   RESOLUTION OF THE CASE, CORRECT?

02:07PM 7   A.   MY GOAL IN THE CASE WAS TO GET THEM TO CHANGE THEIR SOURCE

02:07PM 8   CODE, WHICH THEY DID.

02:07PM 9   Q.   SIR, I THINK YOU SAID YOU DON'T THINK YOU WOULD HAVE FILED

02:07PM 10   A CASE IF IT WAS ONLY ABOUT COPYING OF THE COMMAND-LINE

02:07PM 11   INTERFACE, CORRECT?

02:07PM 12   A.   IF IT WAS ONLY COPYING OF THE COMMANDS, CORRECT.

02:07PM 13   Q.   AND YOU UNDERSTAND IN THIS CASE THERE ARE PATENTS INVOLVED,

02:07PM 14   RIGHT?

02:07PM 15   A.   I THINK THIS IS A CLI CASE RIGHT NOW, IN TERMS OF THE OVER

02:07PM 16   ALL DISPUTE, THERE ARE PATENTS INVOLVED, YES.

02:07PM 17   Q.   SO THERE ARE OTHER PATENTS THAT ARE BEING ASSERTED -- YOU

02:07PM 18   UNDERSTAND THAT THE INTELLECTUAL PROPERTY ALLEGATIONS ARE NOT

02:07PM 19   LIMITED TO THE COMMAND-LINE INTERFACE, RIGHT?

02:07PM 20   A.   YES.

02:07PM 21   Q.   MANY PATENTS?

02:07PM 22   A.   SEVERAL.

02:08PM 23   Q.   OKAY. AND YOU UNDERSTAND THERE'S ACTUALLY IN THIS CASE,

02:08PM 24   ANOTHER PATENT AS WELL, RIGHT?

02:08PM 25   A.   ACTUALLY, I'M NOT INVOLVED IN THAT.

REDIRECT EXAMINATION OF MR. GIANCARLO BY MR. NELSON

02:08PM 1   Q.   OKAY. SO YOU DON'T KNOW ONE WAY OR THE OTHER?

02:08PM 2   A.   NO.

02:08PM 3   Q.   OKAY. NOW, SIR, BEFORE YOU BECAME AN ARISTA BOARD MEMBER,

02:08PM 4   YOU NEVER EXPRESSED TO ANYONE THAT YOU DIDN'T THINK THE

02:08PM 5   COMMAND-LINE INTERFACE WAS PROTECTABLE, DID YOU?

02:08PM 6   A.   NO, I DIDN'T SAY THAT. I HAVE SAID MANY TIMES THAT I DID

02:08PM 7   NOT BELIEVE, IN PUBLIC, THAT THE COMMANDS OF THE COMMAND-LINE

02:08PM 8   INTERFACE ARE NOT PROTECTABLE.

02:08PM 9   Q.   SIR, BETWEEN 2003 WHEN YOU FILED THIS DECLARATION UNDER

02:08PM 10   PENALTY OF PERJURY WITH THE COURT, AND PRIOR TO THE TIME YOU

02:08PM 11   BECAME AN ARISTA BOARD MEMBER, CAN YOU SHOW ME A SINGLE

02:08PM 12   DOCUMENT WHERE YOU SAID YOU DIDN'T THINK THE COMMANDS WERE

02:08PM 13   PROTECTABLE?

02:08PM 14   A.   NO, THESE ARE NOT THINGS WE WORKED OUT.

02:09PM 15   Q.   CAN YOU CITE TO ME A SINGLE INDIVIDUAL THAT YOU KNOW YOU

02:09PM 16   TOLD THAT TO?

02:09PM 17   A.   OH, I COULD.

02:09PM 18   Q.   OKAY. NOW, SINCE THIS LAWSUIT WAS FILED, AND BEFORE YOU

02:09PM 19   CAME IN FOR YOUR TESTIMONY TODAY, YOU MET WITH ARISTA'S

02:09PM 20   LAWYERS, CORRECT?

02:09PM 21   A.   YES.

02:09PM 22   Q.   AND YOU PREPARED FOR YOUR TESTIMONY, CORRECT?

02:09PM 23   A.   YES.

02:09PM 24   Q.   AND YOU PREPARED FOR YOUR TESTIMONY BEFORE YOUR DEPOSITION

02:09PM 25   IN THIS CASE WITH ARISTA'S LAWYERS, CORRECT?

RECROSS-EXAMINATION OF MR. GIANCARLO BY MR. FERRALL

02:09PM 1   A.   I DID.

02:09PM 2   MR. NELSON: THANK YOU, SIR, I HAVE NO FURTHER

02:09PM 3   QUESTIONS.

02:09PM 4   THE COURT: MR. FERRALL, ANYTHING ELSE FOR

02:09PM 5   MR. GIANCARLO?

02:09PM 6   MR. FERRALL: WELL --

02:09PM 7

02:09PM 8   **RECROSS-EXAMINATION BY MR. FERRALL**

02:09PM 9

02:09PM 10   BY MR. FERRALL:

02:09PM 11   Q.   MR. GIANCARLO, CAN YOU TELL US SOME OF THE PEOPLE THAT YOU

02:09PM 12   HAD DISCUSSIONS WITH ABOUT THE PROTECTABILITY ABOUT THE CLI

02:09PM 13   COMMANDS?

02:09PM 14   A.   WELL, DID YOU WANT NAMES?

02:09PM 15   Q.   YEAH.

02:09PM 16   A.   WELL, CERTAINLY. DAN SCHEINMAN, I'VE SPOKEN ABOUT IT WITH

02:09PM 17   BONNIE JOHNSON, YOU KNOW, FROM FOUNDRY NETWORKS, OVER TIME.

02:10PM 18   I'VE SPOKEN ABOUT IT WITH, LET ME SEE, WITH MIKE CLAYCO FROM

02:10PM 19   BROCADE. YEAH.

02:10PM 20   Q.   OKAY. AND MR. SCHEINMAN IS FORMERLY FROM CISCO?

02:10PM 21   A.   FORMERLY FROM CISCO, YES.

02:10PM 22   MR. FERRALL: THANK YOU.

02:10PM 23   THE COURT: MR. NELSON?

02:10PM 24   MR. NELSON: JUST ONE QUESTION.

02:10PM 25

FURTHER REDIRECT EXAMINATION BY MR. NELSON

02:10PM 1

02:10PM 2

02:10PM 3   BY MR. NELSON:

02:10PM 4   Q.   DID YOU EVER GO BACK AND TELL THE COURT WHERE THE HUAWEI

02:10PM 5   CASE WAS FILED THAT YOU WERE WRONG?

02:10PM 6   A.   IN MY DECLARATION, I BELIEVE THAT I STATED THINGS AS I

02:10PM 7   UNDERSTOOD THEM, AND IN FACT, I STILL BELIEVE THAT WHAT I SAID

02:10PM 8   TODAY IS ACCURATE BECAUSE I WAS FOCUSED ON THE CLI AS PART OF

02:10PM 9   THE IOS.

02:10PM 10 Q.   EXCEPT THE FACT THAT YOU DON'T UNDERSTAND THE ALLEGATIONS

02:10PM 11 OF THE COMPLAINT, CORRECT?

02:10PM 12 A.   EXCEPT THAT I HADN'T READ THE COMPLAINT, YES.

02:10PM 13   MR. NELSON: THANK YOU, SIR.

02:10PM 14   NO FURTHER QUESTIONS.

02:10PM 15   THE COURT: ANYTHING ELSE?

02:10PM 16   MR. FERRALL: NO, THANK YOU.

02:10PM 17   THE COURT: MR. GIANCARLO, THANK YOU FOR YOUR

02:10PM 18 TESTIMONY. YOU ARE FREE TO GO.

02:11PM 19   MR. PAK, YOUR NEXT WITNESS?

02:11PM 20   MR. PAK: YES, YOUR HONOR.

02:11PM 21   WE WILL BE CALLING MR. LINCOLN DALE.

02:11PM 22   THE COURT: MR. DALE, IF YOU WOULD COME FORWARD TO

02:11PM 23 THE WITNESS STAND, PLEASE AND STAND TO BE SWORN.

02:11PM 24

02:11PM 25   **LINCOLN DALE,**

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:11PM 1   BEING CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF,

02:11PM 2   HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS

02:11PM 3   FOLLOWS:

02:11PM 4   THE WITNESS: YES.

02:11PM 5   THE CLERK: THANK YOU, SIR. PLEASE BE SEATED.

02:11PM 6   IF YOU WOULD PLEASE STATE YOUR NAME AND SPELL YOUR LAST

02:12PM 7   NAME FOR THE RECORD.

02:12PM 8   THE WITNESS: SURE. MY NAME IS LINCOLN DALE. LAST

02:12PM 9   NAME SPELLED D-A-L-E.

02:12PM 10

02:12PM 11   **DIRECT EXAMINATION BY MR. PAK**

02:12PM 12

02:12PM 13   BY MR. PAK:

02:12PM 14   Q.   IT'S NICE TO SEE YOU AGAIN, MR. DALE.

02:12PM 15   A.   LIKEWISE.

02:12PM 16   Q.   NOW MR. DALE YOU USED TO WORK FOR CISCO, CORRECT?

02:12PM 17   A.   I DID, YES.

02:12PM 18   Q.   AND AFTER YOU LEFT CISCO YOU USED TO WORK FOR ARISTA?

02:12PM 19   A.   THAT'S CORRECT.

02:12PM 20   Q.   NOW YOU ARE NO LONGER EMPLOYED BY ARISTA?

02:12PM 21   A.   THAT'S CORRECT.

02:12PM 22   Q.   SO GOING BACK TO WHEN YOU JOINED CISCO, YOU JOINED CISCO IN

02:12PM 23   1998 TO 1999; DOES THAT SOUND RIGHT?

02:12PM 24   A.   THAT SOUNDS ABOUT RIGHT.

02:12PM 25   Q.   AND YOU WERE AT CISCO FOR ROUGHLY 14 TO 15 YEARS?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:12PM 1   A.   THAT SOUNDS ABOUT RIGHT.

02:12PM 2   Q.   AND THEN YOU JOINED ARISTA IMMEDIATELY AFTER LEAVING CISCO;

02:12PM 3   IS THAT CORRECT?

02:12PM 4   A.   THAT'S CORRECT.

02:12PM 5   Q.   YOU DIDN'T TAKE A LOT OF TIME OFF, AS I RECALL?

02:12PM 6   A.   I THINK I TOOK A MONTH.

02:13PM 7   Q.   AND YOUR LAST JOB TITLE AT CISCO WAS DISTINGUISHED

02:13PM 8   ENGINEER; IS THAT CORRECT?

02:13PM 9   A.   THAT'S CORRECT.

02:13PM 10 Q.   AND YOU WERE PROUD OF THAT TITLE, RIGHT?

02:13PM 11 A.   YEAH, ABSOLUTELY.

02:13PM 12 Q.   AND YOU BELIEVED THAT LESS THAN ONE PERCENT OF ALL

02:13PM 13 ENGINEERS AT CISCO RECEIVE THAT TITLE OF DISTINGUISHED

02:13PM 14 ENGINEER, CORRECT?

02:13PM 15 A.   I THINK SOMETHING LIKE THAT, YES.

02:13PM 16 Q.   AND THERE'S A WHOLE RECOMMENDATION AND APPROVAL PROCESS BY

02:13PM 17 WHICH ENGINEERS ARE NOMINATED AND ULTIMATELY SELECTED FOR THE

02:13PM 18 DISTINGUISHED ENGINEER STATUS.

02:13PM 19 A.   YES.

02:13PM 20 Q.   AND IT'S YOUR BELIEF THAT MS. JAYSHREE ULLAL, WHO IS THE

02:13PM 21 CEO OF ARISTA, WHILE SHE WORKED AT CISCO, WAS INVOLVED IN

02:13PM 22 RECOMMENDING YOU TO THAT POSITION?

02:13PM 23 A.   I THINK SHE PRESENTED MY CASE FOR THE POSITION, YES.

02:13PM 24 Q.   AND DURING YOUR TIME AT CISCO, YOU WORKED IN THE DATA

02:13PM 25 CENTER BUSINESS UNIT, BUILDING SWITCHES THAT GOO INTO THESE BIG

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:13PM 1   DATA CENTERS WE HAVE BEEN DISCUSSING, CORRECT?

02:13PM 2   A.   YES.

02:13PM 3   Q.   AND WHILE YOU WERE AT CISCO, YOU WERE GIVEN ACCESS TO

02:14PM 4   CISCO'S CONFIDENTIAL SOURCE CODE, PRODUCT REQUIREMENTS

02:14PM 5   DOCUMENTS, ROAD MAPS AND OTHER TYPES OF CONFIDENTIAL

02:14PM 6   INFORMATION, CORRECT?

02:14PM 7   A.   THAT'S CORRECT.

02:14PM 8   Q.   AND THERE WERE SECTIONS OF CISCO SOURCE CODE THAT YOU

02:14PM 9   REVIEWED AS PART OF YOUR JOB, CORRECT?

02:14PM 10   A.   YES, SURE, YEAH.

02:14PM 11   Q.   AND THOSE SOURCE CODE MATERIALS WOULD HAVE GONE INTO, FOR

02:14PM 12   EXAMPLE SOME OF THE NEXUS LINE OF PRODUCTS THAT WENT INTO THE

02:14PM 13   DATA CENTER BUSINESS?

02:14PM 14   A.   YEAH, THOSE WERE THE PRODUCTS I WORKED ON.

02:14PM 15   Q.   AND SO THE SPECIFIC LINE OF SWITCHES THAT YOU WORKED ON AS

02:14PM 16   PART OF YOUR JOB RESPONSIBILITIES AT THE DATA CENTER GROUP WAS

02:14PM 17   THE NEXUS PORTFOLIO OF SWITCHES, CORRECT?

02:14PM 18   A.   NEXUS 7K, TO BE SPECIFIC.

02:14PM 19   Q.   7K IS 7000?

02:14PM 20   A.   YES.

02:14PM 21   Q.   YOU TALK ABOUT THE NEXUS 7K, THERE WOULD BE A SERIES OF

02:14PM 22   PRODUCTS THAT BEGIN WITH THE NUMBER 7?

02:14PM 23   A.   THAT'S RIGHT, YES.

02:14PM 24   Q.   BUT THEY ARE ALL DATA CENTER ORIENTED SWITCHING PRODUCTS;

02:14PM 25   IS THAT CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:14PM 1   A.   THAT'S RIGHT.

02:14PM 2   Q.   AND THEY RUN THE NEXUS OPERATING SYSTEM OR NX-OS; IS THAT

02:15PM 3   CORRECT?

02:15PM 4   A.   THAT'S CORRECT, YEAH.

02:15PM 5   Q.   THAT'S THE NEXT GENERATION OPERATING SYSTEM FROM CISCO,

02:15PM 6   CORRECT?

02:15PM 7   A.   IT'S THE MOST RECENT GENERATION, YES.

02:15PM 8   Q.   AND YOU GUIDED, SIR, THE DEVELOPMENT OF THESE NEXUS

02:15PM 9   PRODUCTS WHILE YOU WERE AT CISCO, CORRECT?

02:15PM 10   A.   I DID, YES.

02:15PM 11   Q.   AND THESE WERE ETHERNET SWITCHES, RIGHT?

02:15PM 12   A.   THAT'S CORRECT.

02:15PM 13   Q.   AND WHILE YOU WERE AT CISCO, YOU KNEW THAT CISCO HAD A LOT

02:15PM 14   OF OTHER PRODUCTS OTHER THAN THE NEXUS LINE OF PRODUCTS,

02:15PM 15   CORRECT?

02:15PM 16   A.   MANY, YEAH.

02:15PM 17   Q.   2 OR 3,000 PRODUCTS AT CISCO, CORRECT?

02:15PM 18   A.   SURE.

02:15PM 19   Q.   BUT YOUR KNOWLEDGE OF CISCO'S PRODUCTS SPECIFICALLY RELATED

02:15PM 20   TO ITS NEXUS LINE OF ETHERNET SWITCHES, CORRECT?

02:15PM 21   A.   I WORKED ACROSS MANY GROUPS DURING MY TIME AT CISCO. THE

02:15PM 22   SWITCHING WAS THE LAST GROUP THAT I WORKED ON.

02:15PM 23   Q.   SO WHEN YOU JOINED ARISTA, YOUR MOST RECENT EXPERIENCE

02:15PM 24   DEALT WITH THESE NEXUS LINE OF ETHERNET SWITCHING PRODUCTS,

02:15PM 25   CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:15PM 1   A.   YES.

02:15PM 2   Q.   AND THEN AFTER TAKING ABOUT A MONTH OFF, YOU JOINED ARISTA,

02:15PM 3   AND WHEN DID YOU JOIN ARISTA?

02:15PM 4   A.   IT WOULD HAVE BEEN IN NOVEMBER 2011.

02:16PM 5   Q.   2011?

02:16PM 6   A.   YES.

02:16PM 7   Q.   SO WHEN YOU WENT TO ARISTA DIRECTLY FROM CISCO, YOU STARTED

02:16PM 8   TO WORK ON ARISTA'S ETHERNET SWITCHES, CORRECT?

02:16PM 9   A.   THAT'S WHAT ARISTA BUILDS, YES.

02:16PM 10   Q.   AND THAT'S WHAT ARISTA BUILDS. AND THOSE ARISTA ETHERNET

02:16PM 11   SWITCHES ALSO COMPETE FOR DATA CENTER CUSTOMERS, CORRECT?

02:16PM 12   A.   THEY DO, YEAH.

02:16PM 13   Q.   SO THERE'S DIRECT COMPETITION, YOU UNDERSTAND BETWEEN THE

02:16PM 14   ARISTA ETHERNET SWITCHES THAT YOU WORKED ON VERSUS THE NEXUS

02:16PM 15   LINE OF ETHERNET SWITCHES YOU WORKED ON AT CISCO, CORRECT?

02:16PM 16   A.   SURE.

02:16PM 17   Q.   AND WHEN YOU FIRST JOINED ARISTA, YOU DIDN'T RECEIVE ANY

02:16PM 18   TRAINING ABOUT CONFIDENTIAL INFORMATION AND PROPRIETARY

02:16PM 19   INFORMATION, CORRECT?

02:16PM 20   A.   IT'S POSSIBLE I DID. I MEAN, IT'S WELL UNDERSTOOD, THE

02:16PM 21   PRINCIPLES OF CONFIDENTIALITY.

02:16PM 22   Q.   SIR, AT YOUR DEPOSITION YOU SAID, I DON'T THINK I RECEIVED

02:16PM 23   ANY TRAINING?

02:16PM 24   A.   I THINK I SAID I WASN'T SURE.

02:16PM 25   Q.   LET'S TAKE A LOOK AT WHAT YOU SAID. AND YOU HAVE A COPY OF

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:17PM 1   YOUR DEPOSITION. PAGE 103, LINE 16 TO 21.

02:17PM 2   MR. PAK: YOUR HONOR, MAY I PLAY THE CLIP?

02:17PM 3   THE COURT: YES.

02:17PM 4   (WHEREUPON, A VIDEO WAS PLAYED IN OPEN COURT.)

02:17PM 5   BY MR. PAK:

02:17PM 6   Q.   AND YOU DON'T RECALL RECEIVING ANY TRAINING WHERE SOMEONE

02:17PM 7   WOULD EXPLAIN TO YOU WHAT IS CONFIDENTIAL AND WHAT IS

02:17PM 8   PROPRIETARY WITH RESPECT TO INTELLECTUAL PROPERTY, CORRECT?

02:17PM 9   A.   SO I'VE CERTAINLY SEEN MATERIAL THAT HAD IT AFTER I

02:18PM 10   STARTED, BUT WHEN EXACTLY, I'M NOT SURE.

02:18PM 11   Q.   LET'S TAKE A LOOK AT YOUR DEPOSITION TESTIMONY AT PAGE 103,

02:18PM 12   LINE 24, TO PAGE 104, LINE 4.

02:18PM 13   (WHEREUPON, A VIDEO WAS PLAYED IN OPEN COURT.)

02:18PM 14   Q.   AND SPECIFICALLY NO ONE AT ARISTA SAT DOWN WITH YOU AND

02:18PM 15   TALKED TO YOU ABOUT THE SPECIFIC POLICIES OF ARISTA ABOUT THE

02:18PM 16   CONFIDENTIAL AND PROPRIETARY INFORMATION OF OTHER COMPANIES,

02:18PM 17   CORRECT?

02:18PM 18   A.   NO, I DON'T THINK SO.

02:18PM 19   Q.   YEAH. YOU DIDN'T HAVE THOSE CONVERSATIONS, CORRECT?

02:18PM 20   A.   I DON'T THINK SO.

02:18PM 21   Q.   AND SO WHAT ARISTA MADE YOU DO IS YOU BECAME A MARKETING

02:18PM 22   EXPERT ON THE NEXUS LINE OF SWITCHES THAT YOU DEVELOPED AT

02:19PM 23   CISCO SO THAT WHEN ARISTA EMPLOYEES HAD QUESTIONS ABOUT HOW

02:19PM 24   THOSE PRODUCTS WORKED, YOU WERE ONE OF THE EXPERTS DESIGNATED

02:19PM 25   TO ANSWER THOSE QUESTIONS; ISN'T THAT CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:19PM 1   A.   I COULD ANSWER QUESTIONS, SURE.

02:19PM 2   Q.   YOU WERE ONE OF THE PRODUCT EXPERTS INSIDE ARISTA TO ANSWER

02:19PM 3   QUESTIONS ABOUT THE NEXUS LINE OF PRODUCTS; ISN'T THAT TRUE?

02:19PM 4   SIR?

02:19PM 5   A.   OKAY. SURE.

02:19PM 6   Q.   AND YOU DID HAVE MANY OF THOSE CONVERSATIONS, CORRECT?

02:19PM 7   A.   SURE, PROBABLY.

02:19PM 8   Q.   AND SITTING HERE TODAY, YOU DON'T KNOW WHETHER THERE'S ANY

02:19PM 9   SPECIFIC POLICY AT ARISTA PROHIBITING EMPLOYEES FROM USING

02:19PM 10   CONFIDENTIAL OR PROPRIETARY INFORMATION OF OTHER COMPANIES AS

02:19PM 11   PART OF THEIR JOB, CORRECT?

02:19PM 12   A.   SO I DO KNOW THERE IS SOME GUIDING PRINCIPLES THAT I THINK

02:19PM 13   ONE OF ARISTA'S FOUNDERS, KEN DUDA PUT TOGETHER WAS, I THINK IT

02:19PM 14   WAS CALLED THE ARISTA WAY, AND PART OF THAT WAS DO THE RIGHT

02:20PM 15   THING. I THINK IT WAS WELL ESTABLISHED TO DO THE RIGHT THING.

02:20PM 16   Q.   YOU TESTIFIED TRUTHFULLY WHILE I WAS DEPOSING YOU EARLIER

02:20PM 17   IN THIS CASE, CORRECT, YOU TOOK AN OATH?

02:20PM 18   A.   SURE, YEAH.

02:20PM 19   Q.   OKAY. LET'S TAKE A LOOK AT WHAT YOU SAID AT THAT TIME.

02:20PM 20   AND TAKE A LOOK AT PAGE 106, LINE 22, TO 107, LINE 5.

02:20PM 21   MR. PAK: YOUR HONOR, MAY I PLAY THE CLIP?

02:20PM 22   THE COURT: YES.

02:20PM 23   (WHEREUPON, A VIDEO WAS PLAYED IN OPEN COURT.)

02:20PM 24   Q.   THAT WAS THE SWORN TESTIMONY YOU GAVE AS OF JANUARY 21ST,

02:20PM 25   2016, CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:20PM 1   A.   YEAH.

02:20PM 2   Q.   AND YOU DON'T KNOW IF YOU EVER REFERRED ANY LEGAL TRAINING

02:21PM 3   ON THE REQUIREMENTS OF CONFIDENTIALITY WITH RESPECT TO

02:21PM 4   TECHNICAL DOCUMENTS WHILE YOU WERE EMPLOYED AT ARISTA, CORRECT?

02:21PM 5   A.   NO.

02:21PM 6   Q.   NOW YOU WEREN'T JUST BEING A MARKETING EXPERT, YOU ACTUALLY

02:21PM 7   HAD PRODUCT DESIGN RESPONSIBILITIES OR INPUT INTO ARISTA'S

02:21PM 8   SWITCHES, CORRECT?

02:21PM 9   A.   THAT'S CORRECT.

02:21PM 10   Q.   YOU WERE INVOLVED IN SETTING PRODUCT REQUIREMENTS FOR

02:21PM 11   ARISTA'S ETHERNET SWITCHES THAT COMPETED WITH CISCO SWITCHES,

02:21PM 12   CORRECT?

02:21PM 13   A.   THAT'S RIGHT.

02:21PM 14   Q.   AND PART OF WHAT YOU DID WAS TALK TO CUSTOMERS IN ORDER TO

02:21PM 15   DEFINE HOW ARISTA'S PRODUCTS SHOULD WORK; IS THAT RIGHT?

02:21PM 16   A.   THAT'S RIGHT.

02:21PM 17   Q.   AND AS PART OF YOUR JOB AS ARISTA, YOU WOULD ALSO GIVE

02:21PM 18   PRESENTATIONS AT INDUSTRY CONFERENCES TO TALK ABOUT ARISTA'S

02:21PM 19   ETHERNET SWITCHING PRODUCTS TO POTENTIAL CUSTOMERS, CORRECT?

02:21PM 20   A.   THAT'S RIGHT.

02:21PM 21   Q.   AND DURING YOUR TIME AT ARISTA, YOU ENDED UP WRITING SOME

02:21PM 22   CODE THAT ENDED UP INTO ARISTA SWITCHES, CORRECT?

02:21PM 23   A.   YEAH.

02:22PM 24   Q.   AND YOU WERE ALSO INVOLVED IN ASSISTING CUSTOMERS AND

02:22PM 25   EDUCATING CUSTOMERS ABOUT THE INNER WORKINGS OF ARISTA

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:22PM 1   SWITCHES, CORRECT?

02:22PM 2   A.   THAT'S RIGHT.

02:22PM 3   Q.   AND YOU WERE INVOLVED IN PROMOTING AND SELLING ARISTA'S

02:22PM 4   ETHERNET SWITCHES TO NEW CUSTOMERS AS WELL, CORRECT?

02:22PM 5   A.   THAT'S RIGHT.

02:22PM 6   Q.   NOW I WANT TO STEP BACK A LITTLE BIT AND GO BACK TO YOUR

02:22PM 7   DAYS AT CISCO.

02:22PM 8   MR. DALE, WHILE YOU WERE WORKING AT CISCO, YOU WERE

02:22PM 9   FAMILIAR WITH THE SPECIFIC CLI COMMANDS THAT WERE SUPPORTED BY

02:22PM 10   IOS AND NX-OS OPERATING SYSTEMS FROM CISCO, CORRECT?

02:22PM 11   A.   THAT'S RIGHT.

02:22PM 12   Q.   YOU WERE A DISTINGUISHED ENGINEER, YOU KNEW ABOUT THOSE CLI

02:22PM 13   COMMANDS, CORRECT?

02:22PM 14   A.   I KNEW ABOUT CLI COMMANDS, SURE.

02:22PM 15   Q.   AND OVER THE COURSE OF YOUR CAREER, YOU ACTUALLY AUTHORED

02:22PM 16   SOME OF THOSE CLI COMMANDS YOURSELF, CORRECT?

02:22PM 17   A.   I THINK I DID.

02:22PM 18   Q.   AND THE INITIAL DECISION BY AN ENGINEER TO PROPOSE A

02:22PM 19   COMMAND AS AN EXPRESSION, THAT'S AN INDIVIDUAL SUBJECTIVE

02:23PM 20   CHOICE; ISN'T THAT RIGHT?

02:23PM 21   A.   I THINK SOMEONE NEEDS TO COME UP WITH THE COMMAND TO START

02:23PM 22   WITH, SURE.

02:23PM 23   Q.   SO YOU WOULD AGREE WITH THAT?

02:23PM 24   A.   AN INDIVIDUAL, SURE.

02:23PM 25   Q.   AND YOU WOULD AGREE WITH SITUATIONS WHERE AN ENGINEER COULD

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:23PM 1   COME UP WITH A PARTICULAR COMMAND EXPRESSION FOR A

02:23PM 2   FUNCTIONALITY AND THAT WOULD BE HIS OR HER PREFERENCE FOR THAT,

02:23PM 3   CORRECT?

02:23PM 4   A.   I GUESS SO.

02:23PM 5   Q.   OKAY. AND YOU KNOW FROM YOUR EXPERIENCE THAT DIFFERENT

02:23PM 6   ENGINEERS CAN HAVE DIFFERENT OPINIONS ON HOW TO EXPRESS CERTAIN

02:23PM 7   COMMANDS, CORRECT?

02:23PM 8   A.   SURE.

02:23PM 9   Q.   AND YOU'VE HAD YOUR OPINIONS AND OTHER PEOPLE HAD THEIR

02:23PM 10   DIFFERENT OPINIONS ON HOW TO EXPRESS A PARTICULAR COMMAND

02:23PM 11   EXPRESSION WHILE YOU WERE EMPLOYED BY CISCO; IS THAT RIGHT?

02:23PM 12   A.   THAT'S RIGHT.

02:23PM 13   Q.   AND WHEN YOU WERE HAVING THESE DIFFERENT OPINIONS, THOSE

02:23PM 14   WERE YOUR PERSONAL OPINIONS AND PREFERENCES FOR HOW A CLI

02:23PM 15   COMMAND EXPRESSION SHOULD BE EXPRESSED, AND YOU EXPRESSED THOSE

02:23PM 16   OPINIONS TO YOUR COLLEAGUES AT CISCO, CORRECT?

02:23PM 17   A.   I PROBABLY DID, YEAH.

02:23PM 18   Q.   AND YOU WOULD AGREE WITH ME THAT TWO ENGINEERS COULD SIT

02:23PM 19   DOWN AND PROPOSE TWO VERY DIFFERENT COMMANDS FOR ANY PARTICULAR

02:24PM 20   FUNCTION, CORRECT?

02:24PM 21   A.   SURE.

02:24PM 22   Q.   FOR EXAMPLE IT'S POSSIBLE FOR AN ENGINEER TO SIT DOWN AND

02:24PM 23   PICK THE WORD DISPLAY INSTEAD OF THE WORD SHOW FOR THE EXACT

02:24PM 24   TAME FUNCTIONALITY, IS THAT TRUE?

02:24PM 25   A.   IT'S POSSIBLE. IT'S UNLIKELY, BUT IT'S POSSIBLE.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:24PM 1   Q.   IT'S POSSIBLE, ISN'T IT SIR?

02:24PM 2   A.   IT'S POSSIBLE.

02:24PM 3   Q.   THERE'S NO TECHNICAL REASON WHY YOU COULDN'T CHOOSE ONE OR

02:24PM 4   THE OTHER; ISN'T THAT TRUE?

02:24PM 5   A.   IT'S JUST A WORD.

02:24PM 6   Q.   IT'S JUST A WORD CHOICE, CORRECT? IS THAT RIGHT? YES? WE

02:24PM 7   NEED AN AUDITORY ANSWER.

02:24PM 8   A.   IT'S JUST A WORD, YES.

02:24PM 9   Q.   AN ENGINEER COULD PICK "VISUALIZE" RATHER THAN "SHOW;"

02:24PM 10   ISN'T THAT TRUE?

02:24PM 11   A.   IT'S POSSIBLE.

02:24PM 12   Q.   IT'S ANOTHER WORD CHOICE, CORRECT?

02:24PM 13   A.   YES.

02:24PM 14   Q.   YOU COULD CHOOSE ANY WORD FOR ANY COMMAND; ISN'T THAT

02:24PM 15   RIGHT?

02:24PM 16   A.   I THINK IF WE WERE TO USE YOUR EXAMPLE, THERE WERE ALREADY

02:24PM 17   THOUSANDS OF COMMANDS USING THE WORD SHOW, SO IT MADE LOGICAL

02:24PM 18   SENSE TO USE IF YOU DID NOT USE "DISPLAY," FOR EXAMPLE, WHEN

02:24PM 19   "SHOW" IS ALREADY THE COMMONLY USED WORD.

02:25PM 20   Q.   RIGHT. BECAUSE THAT WAS -- CISCO HAD ALREADY USED "SHOW"

02:25PM 21   AS THE COMMONLY USED WORDING TO BE CONSISTENT WITH CISCO'S

02:25PM 22   CHOICE OF "SHOW," THAT'S WHAT YOU ARE TALKING ABOUT, CORRECT?

02:25PM 23   A.   SURE. I THINK CISCO DEVICES USED "SHOW," YEAH.

02:25PM 24   Q.   AND SO IF YOU ARE DESIGNING A CISCO CLI COMMAND, YOU WANT

02:25PM 25   TO BE CONSISTENT WITH PRIOR CHOICES MADE BY OTHER CISCO

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:25PM 1   ENGINEERS, THAT'S ONE OF THE DESIGN OBJECTIVES, CORRECT?

02:25PM 2   A.   SURE.

02:25PM 3   Q.   OKAY. BUT SETTING ASIDE, YOU ARE NO LONGER WORKING AT

02:25PM 4   CISCO, IF YOU WERE WORKING AT ANY COMPANY, YOU COULD CHOOSE ANY

02:25PM 5   WORD FOR ANY COMMAND; IS THAT TRUE?

02:25PM 6   A.   SURE, OKAY.

02:25PM 7   Q.   IT'S JUST A WORD CHOICE, CORRECT?

02:25PM 8   A.   UH-HUH.

02:25PM 9   Q.   THAT'S SUBJECTIVE, RIGHT?

02:25PM 10   A.   IT IS SUBJECTIVE BUT I THINK THERE'S MANY FACTORS THAT GO

02:25PM 11   INTO DECIDING COMMANDS THEMSELVES.

02:25PM 12   Q.   BUT ULTIMATELY, SIR, THAT'S A PROFESSIONAL JUDGMENT CALL BY

02:25PM 13   AN ENGINEER; ISN'T THAT TRUE?

02:25PM 14   A.   SURE.

02:25PM 15   Q.   NOW I WANT TO SWITCH GEARS AND TALK ABOUT YOUR TENURE AT

02:25PM 16   ARISTA.

02:26PM 17   SO YOU LEAVE CISCO, NOW YOU ARE AT ARISTA, AND PART OF YOUR

02:26PM 18   JOB RESPONSIBILITY WAS TALK TO ARISTA CUSTOMERS ABOUT ARISTA'S

02:26PM 19   PRODUCTS, CORRECT?

02:26PM 20   A.   THAT'S CORRECT.

02:26PM 21   Q.   AND I BELIEVE -- WHAT WAS YOUR TITLE AT ARISTA?

02:26PM 22   A.   I FORGOT WHAT MY INITIAL TITLE WAS, BUT AT ARISTA MY FINAL

02:26PM 23   TITLE WAS DISTINGUISHED ENGINEER AS WELL.

02:26PM 24   Q.   OKAY. SO THAT'S A COMPARABLE TITLE AT ARISTA COMPARED TO

02:26PM 25   THE TITLE YOU HELD AT CISCO; IS THAT CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:26PM 1   A.   THAT'S CORRECT.

02:26PM 2   Q.   AND AGAIN, THAT WOULD BE AN ENGINEER OF DISTINCTION AT

02:26PM 3   ARISTA, CORRECT?

02:26PM 4   A.   I GUESS SO.

02:26PM 5   Q.   WHEN YOU WERE AT ARISTA, YOU POINTED OUT TO POTENTIAL

02:26PM 6   CUSTOMERS THAT ARISTA'S USER INTERFACE IS JUST LIKE CISCO'S;

02:26PM 7   ISN'T THAT TRUE?

02:26PM 8   A.   SURE, YEAH.

02:26PM 9   Q.   YOU SAID THAT TO MANY CUSTOMERS, DIDN'T YOU?

02:26PM 10   A.   IT'S LIKELY I DID.

02:26PM 11   Q.   OKAY. AND YOU ALSO TOLD THOSE SAME CUSTOMERS THAT THEY CAN

02:27PM 12   SAVE RE-TRAINING COSTS AND THEY CAN EASILY ADOPT ARISTA'S

02:27PM 13   NETWORKING EQUIPMENT BECAUSE IT HAS THE SAME USER INTERFACE AS

02:27PM 14   CISCO'S, ISN'T THAT RIGHT?

02:27PM 15   A.   THAT'S CORRECT.

02:27PM 16   Q.   AND TAKE A LOOK AT, SIR, EXHIBIT 176 IN YOUR BINDER.

02:27PM 17   THIS WAS AN E-MAIL THAT WAS SENT FROM MR. DAVID MCLEOD, TO

02:27PM 18   YOU, MR. DALE, ON OCTOBER 9TH, 2012, WHILE YOU WERE EMPLOYED AT

02:27PM 19   ARISTA NETWORKS, CORRECT?

02:27PM 20   A.   THAT'S CORRECT.

02:27PM 21   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE

02:27PM 22   EXHIBIT 176 INTO EVIDENCE.

02:27PM 23   MR. SILBERT: NO OBJECTION.

02:27PM 24   THE COURT: IT WILL BE ADMITTED.

02:27PM 25

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:27PM 1   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 176, HAVING BEEN

02:27PM 2   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

02:27PM 3   EVIDENCE.)

02:27PM 4   BY MR. PAK:

02:27PM 5   Q.   SO LET'S TAKE A LOOK AT THE PAGE, THE SECOND PAGE, WHICH

02:27PM 6   HAS THE BATES NUMBER 803, AND WHO WAS MR. MCLEOD AT ARISTA?

02:28PM 7   A.   SO DAVID, PER HIS TITLE HERE, WAS SALES SOUTHERN REGION

02:28PM 8   AUSTRALIA, NEW ZEALAND.

02:28PM 9   Q.   OKAY. AND YOU WORKED REGULARLY WITH MR. MCLEOD, CORRECT?

02:28PM 10   A.   I DID, YES.

02:28PM 11   Q.   AND BOTH OF YOU WERE TRYING TO SELL ARISTA EQUIPMENT TO

02:28PM 12   POTENTIAL CUSTOMERS, CORRECT?

02:28PM 13   A.   THAT'S CORRECT.

02:28PM 14   Q.   SO LET'S TAKE A LOOK AT THE TOP PARAGRAPH. WHAT MR. MCLEOD

02:28PM 15   WROTE IS, IN A QUICK SUMMARY OF OUR VALUE/DIFFERENTIATION, IF

02:28PM 16   YOU ARE LOOKING TO SIMPLIFY OUR NETWORK DESIGN, FUTURE PROOF

02:28PM 17   FOR NEW SERVICES AND REDUCE CAPEX/OPEX OUR SOLUTIONS CAN HELP

02:28PM 18   IN A STORAGE CLOUD ENVIRONMENT.

02:28PM 19   AND CAPEX/OPEX, THOSE ARE EXPENDITURES, CAPITAL

02:29PM 20   EXPENDITURE, OPERATIONAL EXPENDITURE; IS THAT RIGHT?

02:29PM 21   A.   I THINK THAT'S FAIR.

02:29PM 22   Q.   AND WHAT HE SAYS NEXT IS, ADD IN A CLI IDENTICAL TO CISCO

02:29PM 23   IOS AND WE MAKE IT SIMPLE TO TRANSITION OPERATIONALLY.

02:29PM 24   THAT WAS CONSISTENT WITH YOUR UNDERSTANDING OF ARISTA'S

02:29PM 25   MARKETING PITCH, CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:29PM 1   A.   TYPICALLY, I DON'T THINK MARKETING INVOLVED TALKING ABOUT

02:29PM 2   THE COMMAND LINE, IT GENERALLY WASN'T A MAIN SELLING POINT.

02:29PM 3   THAT SAID, FOR SOME CUSTOMERS, WHO MIGHT HAVE BEEN TRAINED

02:29PM 4   ON OTHER DEVICES, IT MIGHT HAVE BEEN IMPORTANT.

02:29PM 5   Q.   YOU DON'T DISPUTE THAT ARISTA PEOPLE TALKED TO CUSTOMERS

02:29PM 6   AND SAID THESE VERY SAME THINGS, ADD IN A CLI IDENTICAL TO

02:29PM 7   CISCO IOS AND WE IT MAKE IT SIMPLE TO TRANSITION EXISTING CISCO

02:29PM 8   CUSTOMERS TO ARISTA CUSTOMERS, CORRECT?

02:29PM 9   A.   SURE.

02:29PM 10   Q.   YOU SAID THOSE THINGS, CORRECT?

02:29PM 11   A.   I DON'T KNOW IF I USED THOSE EXACT WORDS, BUT SURE.

02:29PM 12   Q.   OKAY. AND YOU KNOW OTHER PEOPLE AT ARISTA USED SIMILAR

02:30PM 13   WORDS TO CONVEY THE SAME MESSAGE, CORRECT?

02:30PM 14   A.   YES, IT'S POSSIBLE.

02:30PM 15   Q.   AND AS WE DISCUSSED EARLIER, PART OF YOUR JOB AT ARISTA WAS

02:30PM 16   TO GIVE THESE PRESENTATIONS TO INDUSTRY CONFERENCES ABOUT

02:30PM 17   ARISTA'S PRODUCTS, CORRECT?

02:30PM 18   A.   THAT'S CORRECT.

02:30PM 19   Q.   AND WHEN YOU PRESENTED AT INDUSTRY CONFERENCES TALKING

02:30PM 20   ABOUT ARISTA PRODUCTS AS A DISTINGUISHED ENGINEER, YOU KNEW IT

02:30PM 21   WAS IMPORTANT TO MAKE SURE THAT YOU WERE PRESENTING ACCURATELY,

02:30PM 22   CORRECT?

02:30PM 23   A.   I LIKE TO BE ACCURATE, YES.

02:30PM 24   Q.   YOU KNOW IT WAS IMPORTANT, CORRECT?

02:30PM 25   A.   SURE.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:30PM 1   Q.   AND YOU DIDN'T WANT TO HEAR PEOPLE SAY SOMETHING THAT WAS

02:30PM 2   NOT TRUE AT THESE INDUSTRY CONFERENCES, CORRECT?

02:30PM 3   A.   THAT'S CORRECT.

02:30PM 4   Q.   AND YOU TOOK THE TIME TO PREPARE AND MAKE SURE THAT YOUR

02:30PM 5   PRESENTATIONS AND YOUR COMMENTS WOULD BE ACCURATE?

02:30PM 6   A.   WHEREVER I COULD, SURE.

02:30PM 7   Q.   AND MR. DALE, ONE OF THE THINGS YOU SAID AT INDUSTRY

02:30PM 8   CONFERENCES ON BEHALF OF ARISTA IS THAT WHEN ARISTA SAYS THAT

02:31PM 9   ITS SWITCHES RUN ON AN INDUSTRY STANDARD CLI, THAT WAS YOUR

02:31PM 10   JOKE FOR SAYING IT'S THE SAME AS CISCO IOS.

02:31PM 11   YOU SAID THAT, CORRECT?

02:31PM 12   A.   I THINK I'VE SAID THAT, YES.

02:31PM 13   Q.   SAID THAT PUBLICLY, DIDN'T YOU, SIR?

02:31PM 14   A.   WELL, I DON'T KNOW IF IT WAS PUBLIC, BUT IT WAS CERTAINLY

02:31PM 15   IN A CONFERENCE, SURE.

02:31PM 16   Q.   A LOT OF PEOPLE ATTENDING THAT CONFERENCE, CORRECT?

02:31PM 17   A.   YEAH, A FEW HUNDRED.

02:31PM 18   Q.   AND IT WAS RECORDED ON VIDEO?

02:31PM 19   A.   I GATHER SO, YES.

02:31PM 20   Q.   PUBLISHED ON THE INTERNET?

02:31PM 21   A.   IT WAS PUBLISHED SOMEWHERE, I DON'T KNOW IF IT WAS ON THE

02:31PM 22   INTERNET.

02:31PM 23   Q.   YOU ALSO SAID AT THE SAME CONFERENCES THAT ARISTA CUSTOMERS

02:31PM 24   COULD TAKE CONFIGURATION FILES OFF OF A CISCO CATALYST OR A

02:31PM 25   CATALYST OR CISCO NEXUS PRODUCT AND APPLY IT EXACTLY THE SAME

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DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:31PM 1   WAY TO AN ARISTA SWITCH, CORRECT?

02:31PM 2   A.   I PROBABLY SAID SOMETHING LIKE THAT, YEAH.

02:31PM 3   Q.   YOU'VE STATED THAT, RIGHT, CORRECT?

02:31PM 4   A.   SURE, YEAH.

02:31PM 5   Q.   AND AGAIN, CATALYST AND NEXUS PRODUCTS ARE CISCO PRODUCTS,

02:31PM 6   CORRECT?

02:31PM 7   A.   THAT'S RIGHT.

02:31PM 8   Q.   AND IF YOU TAKE A LOOK AT EXHIBIT 166 --

02:32PM 9   MR. PAK: YOUR HONOR, I HAVE A CD THAT HAS ONE OF THE

02:32PM 10   VIDEOS, AND I WILL DEFINITELY PLAY A CLIP FROM THAT VIDEO

02:32PM 11   TODAY.

02:32PM 12   THE COURT: OKAY. AND YOU WILL GIVE ME A TRANSCRIPT

02:32PM 13   OF THAT CLIP.

02:32PM 14   MR. PAK: OF COURSE.

02:32PM 15   THE COURT: THANK YOU.

02:32PM 16   MR. PAK: SO I WOULD LIKE TO MOVE EXHIBIT 166, WHICH

02:32PM 17   IS THE ARISTA REINVENTING DATA CENTER SWITCHING PRESENTATION BY

02:32PM 18   MR. LINCOLN DALE.

02:32PM 19   THE COURT: AND THE RECORD, TO BE CLEAR, ONLY THE

02:32PM 20   PORTION PLAYED IN THE COURTROOM AND SUBMITTED IN THE TRANSCRIPT

02:32PM 21   IS IN EVIDENCE IN THIS CASE. AND WE HAVEN'T OFFERED IT IN

02:32PM 22   EVIDENCE, BUT I PRESUME YOU ARE.

02:32PM 23   MR. SILBERT: MAY WE HAVE THE WHOLE CLIP BE IN

02:32PM 24   EVIDENCE? I DON'T OBJECT TO HIM PLAYING A PORTION IN COURT.

02:32PM 25   THE COURT: OH, IS THAT RIGHT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:32PM 1   MR. PAK: I'M HAPPY TO PUT THE WHOLE THING INTO

02:32PM 2   EVIDENCE, BUT WE WILL DEFINITELY PLAY SOME CLIPS THAT WILL BE

02:32PM 3   IN TRANSCRIPT.

02:32PM 4   THE COURT: IT'S EITHER ALL PLAYED IN THE COURTROOM

02:32PM 5   OR IT'S NOT IN EVIDENCE. AND I'M SURE WE WOULD ALL LOVE TO SEE

02:32PM 6   IT ALL.

02:32PM 7   MR. PAK: IN THIS CASE, YOUR HONOR, I THINK I'M GOING

02:32PM 8   TO PLAY PART OF THE CLIPS AND THAT WILL BE PART OF MY EVIDENCE.

02:32PM 9   THE COURT: OKAY. I WILL ADMIT THE PORTIONS OF

02:33PM 10   EXHIBIT 166 THAT ARE PLAYED IN THE COURTROOM, AND THAT WILL BE

02:33PM 11   CONFIRMED IN THE RECORD BY THE TRANSCRIPT SUBMITTED BY CISCO.

02:33PM 12   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 166, HAVING BEEN

02:33PM 13   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

02:33PM 14   EVIDENCE.)

02:33PM 15   MR. PAK: SO MR. LINCOLN DALE, LET'S TAKE A LOOK.

02:33PM 16   FIRST OF ALL, MR. FISHER, LET'S PLAY AROUND THE FIRST

02:33PM 17   20 SECONDS OF THIS VIDEO.

02:33PM 18   (WHEREUPON, A VIDEO WAS PLAYED IN OPEN COURT.)

02:33PM 19   MR. PAK: THANK YOU, YOUR HONOR.

02:33PM 20   Q.   THAT WAS YOU ON THE VIDEO?

02:33PM 21   A.   IT CERTAINLY LOOKS LIKE ME, YES.

02:33PM 22   Q.   SO LET'S NOW JUMP TO ANOTHER PORTION OF THE SAME VIDEO.

02:34PM 23   THIS TIME, YOUR HONOR, WE ARE GOING TO BE PLAYING FROM 21

02:34PM 24   MINUTES AND 41 SECONDS ON.

02:34PM 25   THE COURT: WE ARE GOING TO LISTEN TO 21 MINUTES?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:34PM 1   MR. PAK: NO, WE ARE STARTING FROM 21 MINUTES INTO

02:34PM 2   THE VIDEO.

02:34PM 3   THE COURT: WE CAN LISTEN TO 21 MINUTES, I JUST

02:34PM 4   WANTED TO KNOW IF I HEARD YOU RIGHT.

02:34PM 5   MR. PAK: I WOULDN'T DO THAT TO US.

02:34PM 6   (WHEREUPON, A VIDEO WAS PLAYED IN OPEN COURT.)

02:34PM 7   Q.   I WANT TO GO BACK AND PLAY IT ONE MORE TIME, MR. FISHER.

02:34PM 8   AND THEN MR. FISHER, IF WE COULD BACK UP THERE AND IF YOU

02:34PM 9   COULD PAUSE AT THE LAST FRAME.

02:35PM 10   I WANT TO ASK MR. -- SO AGAIN, MR. DALE, THAT WAS YOU?

02:35PM 11   A.   IT'S ME.

02:35PM 12   Q.   OKAY. AND AT THE TOP IT SAYS EOS INDUSTRY STANDARD CLI,

02:35PM 13   CORRECT?

02:35PM 14   A.   THAT'S RIGHT.

02:35PM 15   Q.   AND THEN ON THE LEFT-HAND SIDE IT SAYS, COMMON CLI TOOLS

02:35PM 16   AND WHAT YOU WROTE IN THIS INDUSTRY PRESENTATION IS ARISTA'S

02:35PM 17   CLI COMMANDS, SAME AS CISCO IOS, THAT'S WHAT YOU WROTE AND

02:35PM 18   PRESENTED, CORRECT?

02:35PM 19   A.   THAT'S WHAT'S IN THAT SLIDE.

02:35PM 20   Q.   AND IF YOU LOOK CAREFULLY SIR AT THE SCREEN, YOU WILL SEE

02:35PM 21   THAT THERE'S A SCREEN OUTPUT; IS THAT CORRECT?

02:35PM 22   A.   THAT'S RIGHT.

02:35PM 23   Q.   AND WHAT YOU ARE ACTUALLY SHOWING IS A SCREEN SNAPSHOT OF

02:35PM 24   AN ARISTA SWITCH RUNNING SOME COMMANDS AND SCREEN OUTPUTS FROM

02:35PM 25   THAT SWITCH; IS THAT CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:35PM   1   A.   THAT'S RIGHT.

02:36PM   2   Q.   AND YOU WERE DISPLAYING THIS TO THE INDUSTRY PARTICIPANTS

02:36PM   3   SO THEY COULD SEE THAT WHAT YOU WOULD TYPE IN TO AN ARISTA

02:36PM   4   SWITCH AND GET BACK WOULD BE, IN YOUR WORDS, SAME AS CISCO IOS,

02:36PM   5   CORRECT?

02:36PM   6   A.   THAT'S RIGHT.

02:36PM   7   Q.   SO IF YOU LOOK HERE, YOU CAN SEE THAT THERE ARE A COUPLE OF

02:36PM   8   COMMANDS, ONE OF THE COMMANDS IS SWITCHPORT ACCESS VLAN.

02:36PM   9   THAT'S ABOUT FIVE LINES IN, CAN YOU SEE THAT?

02:36PM 10   A.   I SEE THAT.

02:36PM 11   Q.   SO ONE OF THE COMMANDS THAT YOU WERE DEMONSTRATING TO THE

02:36PM 12   INDUSTRY WAS THE COMMAND SWITCHPORT ACCESS VLAN, AND THEN YOU

02:36PM 13   SHOW THE OUTPUT OF THAT COMMAND, CORRECT?

02:36PM 14   A.   THAT'S CORRECT. IT'S INTERESTING, I DON'T THINK A CISCO

02:36PM 15   DEVICE WOULD HAVE THAT SAME OUTPUT.

02:36PM 16   Q.   BUT YOU KNOW THAT CISCO DEVICES HAVE THE SAME COMMANDS?

02:36PM 17   A.   SURE, IT'S THE SAME COMMAND.

02:36PM 18   Q.   YEAH. YOU KNOW AND THAT'S ONE OF THE COMMANDS THAT'S AT

02:36PM 19   ISSUE IN THIS CASE?

02:36PM 20   A.   SURE, YEAH.

02:36PM 21   Q.   I WANT TO INTRODUCE INTO EVIDENCE NOW, IF YOU LOOK AT

02:37PM 22   EXHIBIT 165.

02:37PM 23   CAN YOU CONFIRM THAT THIS IS THE SAME POWERPOINT THAT YOU

02:37PM 24   PRESENTED IN POWERPOINT FORMAT AT THE INDUSTRY CONFERENCE VIDEO

02:37PM 25   THAT WE LOOKED AT?

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DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:37PM 1   A.   IT CERTAINLY LOOKS TO BE THE SAME.

02:37PM 2   MR. PAK: OKAY. AND YOUR HONOR, I WOULD LIKE TO MOVE

02:37PM 3   EXHIBIT 165 INTO EVIDENCE.

02:37PM 4   MR. SILBERT: NO OBJECTION.

02:37PM 5   THE COURT: IT WILL BE ADMITTED.

02:37PM 6   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 165, HAVING BEEN

02:37PM 7   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

02:37PM 8   EVIDENCE.)

02:37PM 9   BY MR. PAK:

02:37PM 10   Q.   AND IF WE COULD JUST PORTRAY THE FIRST SCREEN. THAT'S YOUR

02:37PM 11   NAME THERE, LINCOLN DALE.

02:37PM 12   A.   IT IS, YES.

02:37PM 13   Q.   AND IF WE TURN TO SLIDE 38, IT'S CUT OFF A LITTLE BIT BUT

02:37PM 14   YOU CAN SEE IT'S GOT THE INDUSTRY STANDARD CLI, ARISTA CLI

02:37PM 15   COMMAND SAME AS CISCO IOS, CORRECT?

02:37PM 16   A.   YEAH, IT'S CUT OFF, BUT I'M SURE THAT'S WHAT IT SAYS.

02:38PM 17   Q.   OKAY. AND LET'S TAKE A LOOK AT ONE MORE DOCUMENT. THIS IS

02:38PM 18   EXHIBIT 169. CAN YOU CONFIRM THAT THIS IS A DOCUMENT THAT YOU

02:38PM 19   CREATED AS WELL?

02:38PM 20   A.   IT'S POSSIBLE, I CERTAINLY CREATED SOME OF IT, MAYBE NOT

02:38PM 21   ALL OF IT, BUT SURE.

02:38PM 22   Q.   YES. I THINK THERE IS A SCREEN SNAPSHOT WHERE IT SAYS

02:38PM 23   LINCOLN-DALE-S-MACBOOK. DID YOU HAVE A MACBOOK AT ARISTA?

02:38PM 24   A.   I DID, YES.

02:38PM 25   Q.   OKAY. DO YOU HAVE ANY REASON TO DISPUTE THAT THIS CAME,

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:39PM 1   FOR EXAMPLE, THAT WOULD BE AT SLIDE -- THE BATES NUMBER 773, IF

02:39PM 2   YOU LOOK AT THE TOP OF THAT IN YOUR BINDER YOU WILL SEE LINCOLN

02:39PM 3   DALE MACBOOK. DO YOU SEE THAT ENTRY?

02:39PM 4   A.   YEAH, I'M NOT SURE WHAT THE QUESTION IS.

02:39PM 5   Q.   IS THIS A DOCUMENT THAT CAME FROM YOUR FILES?

02:39PM 6   A.   IT LOOKS LIKE IT COULD, SURE.

02:39PM 7   MR. PAK: AND YOUR HONOR, AT THIS POINT I DON'T THINK

02:39PM 8   THERE'S AN OBJECTION. I WOULD LIKE TO MOVE THIS DOCUMENT INTO

02:39PM 9   EVIDENCE AS WELL.

02:39PM 10   MR. SILBERT: NO OBJECTION.

02:39PM 11   THE COURT: IT WILL BE ADMITTED.

02:39PM 12   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 169, HAVING BEEN

02:39PM 13   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

02:39PM 14   EVIDENCE.)

02:39PM 15   BY MR. PAK:

02:39PM 16   Q.   SO IF WE TAKE A LOOK AT THIS DOCUMENT, IT'S A SIMILAR

02:39PM 17   DOCUMENT, IT'S GOT ARISTA REINVENTING DATA CENTER SWITCHING.

02:39PM 18   IF WE JUMP TO THE PAGE ENDING IN 773. THIS IS INTERESTING,

02:39PM 19   SO THIS DOCUMENT THAT YOU ALSO CREATED HAS EOS AT THE TOP, BUT

02:39PM 20   INSTEAD OF INDUSTRY STANDARD CLI IT SAYS OPERATIONAL CLI,

02:40PM 21   DOESN'T IT?

02:40PM 22   A.   IT DOES.

02:40PM 23   Q.   AND ON THE BOTTOM AT THE LEFT-HAND SIDE IT SAYS ARISTA CLI

02:40PM 24   COMMANDS SAME AS CISCO IOS, CORRECT?

02:40PM 25   A.   IT DOES, YES.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:40PM 1   Q.   AND IT SHOWS IN FACT, THE SAME SCREEN OUTPUT FOR THE

02:40PM 2   COMMAND SWITCHPORT ACCESS VLAN THAT WE TALKED ABOUT WITH YOUR

02:40PM 3   NAME, LINCOLN DALE AT THE TOP, CORRECT?

02:40PM 4   A.   IT DOES.

02:40PM 5   Q.   LET'S TAKE A LOOK AT ONE MORE DOCUMENT, AND THAT'S

02:40PM 6   EXHIBIT 168.

02:40PM 7   BY THE WAY, WHEN YOU WERE MAKING THESE STATEMENTS ABOUT

02:40PM 8   INDUSTRY STANDARD, ISN'T IT TRUE THAT YOU HAD NOT PERSONALLY

02:40PM 9   ANALYZED ANY OF THE CLI COMMAND SETS OF ALL THE VARIOUS OTHER

02:40PM 10   VENDORS THAT COMPETE WITH ARISTA AND CISCO, CORRECT?

02:40PM 11   A.   I HAD SOME DEGREE OF FAMILIARITY, BUT I CERTAINLY HADN'T

02:41PM 12   ANALYZED ALL OF THEM, NO.

02:41PM 13   Q.   AND YOU WEREN'T FAMILIAR, FOR EXAMPLE, WITH THE JUNIPER,

02:41PM 14   JUNOS CLI, CORRECT?

02:41PM 15   A.   I MEAN I KNOW WHAT IT IS, BUT I HAVEN'T USED IT A LOT, NO.

02:41PM 16   Q.   AND AT THAT TIME YOU HAD NOT ANALYZED OR LOOKED AT THE

02:41PM 17   SPECIFIC COMMAND-LINE INTERFACES FROM OTHER VENDORS TO SEE HOW

02:41PM 18   SIMILAR OR DISSIMILAR THEY WERE TO COMMANDS IN THE CISCO IOS,

02:41PM 19   CORRECT?

02:41PM 20   A.   NO, I KNEW THEY WERE ALL SIMILAR.

02:41PM 21   Q.   YOU ARE NOT AN EXPERT IN COMMAND-LINE INTERFACES, IS THAT

02:41PM 22   TRUE?

02:41PM 23   A.   I DON'T CLAIM TO BE, NO.

02:41PM 24   Q.   AND ISN'T IT TRUE, SIR, THAT YOU ARE NOT EVEN AN EXPERT ON

02:41PM 25   WHAT IT MEANS TO BE AN INDUSTRY STANDARD, CORRECT?

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:41PM 1   A.   I THINK THERE'S PROBABLY MANY DIFFERENT DEFINITIONS OF

02:41PM 2   INDUSTRY STANDARD, SURE.

02:41PM 3   Q.   WELL, LET'S TAKE A LOOK AT WHAT YOU SAID IN YOUR

02:41PM 4   DEPOSITION, PAGE 293, LINE 12 THROUGH 15.

02:41PM 5   MR. PAK: YOUR HONOR, MAY I PLAY THE CLIP?

02:42PM 6   THE COURT: YES, YOU MAY.

02:42PM 7   (WHEREUPON, A VIDEO WAS PLAYED IN OPEN COURT.)

02:42PM 8   Q.   BUT WHAT YOU TOLD PUBLICLY TO THE INDUSTRY STANDARD

02:42PM 9   PARTICIPANTS IS THAT WHAT YOU USED THE WORD INDUSTRY STANDARD

02:42PM 10 CLI, THAT'S A JOKE FOR BEING THE SAME AS CISCO IOS, CORRECT?

02:42PM 11 A.   I THINK I SAID SOMETHING LIKE THAT, SURE.

02:42PM 12 Q.   SO LET'S GO BACK TO EXHIBIT 168. WHAT IS THE CE, MAILING

02:42PM 13 LIST AT ARISTA?

02:42PM 14 A.   CE, STOOD FOR THE CUSTOMER ENGINEER.

02:42PM 15 Q.   OKAY. AND YOU WOULD HAVE BEEN PART OF THAT E-MAIL ALIAS

02:42PM 16 LIST, CORRECT?

02:42PM 17 A.   YEAH, I WAS ON THAT ALIAS, CORRECT.

02:42PM 18 Q.   AND THERE WERE MANY OTHERS WHO WERE ON THAT ALIAS, CORRECT?

02:42PM 19 A.   YEAH. MANY.

02:42PM 20 Q.   MR. ANSHUL SADANA WOULD HAVE BEEN ON THAT, CORRECT?

02:42PM 21 A.   HE PROBABLY WOULD HAVE BEEN, YEAH.

02:42PM 22 Q.   LET'S TAKE A LOOK AT EXHIBIT 168, IT WAS AN E-MAIL SENT BY

02:43PM 23 MANUEL MENDEZ TO THE CE-MAILING LIST AND OTHER EMPLOYEES. AND

02:43PM 24 IT'S DATED UNTIL JULY 10, 2014; DO YOU SEE THAT?

02:43PM 25 A.   I SEE THAT.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:43PM 1   Q.   DO YOU HAVE ANY REASON TO DISPUTE THE AUTHENTICITY OF THIS

02:43PM 2   E-MAIL?

02:43PM 3   A.   I DON'T. I'M NOT INVOLVED IN THE DISCUSSION, BY THE LOOKS,

02:43PM 4   BUT SURE, I HAVE NO REASON TO BELIEVE THAT IT'S NOT AUTHENTIC.

02:43PM 5   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE

02:43PM 6   EXHIBIT 168 INTO EVIDENCE.

02:43PM 7   MR. SILBERT: NO OBJECTION.

02:43PM 8   THE COURT: IT WILL BE ADMITTED.

02:43PM 9   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 168, HAVING BEEN

02:43PM 10   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

02:43PM 11   EVIDENCE.)

02:43PM 12   BY MR. PAK:

02:43PM 13   Q.   JUST TO BE CLEAR, YOU ARE NOT DISPUTING THAT YOU RECEIVED

02:43PM 14   THIS E-MAIL, CORRECT?

02:43PM 15   A.   I HAVEN'T CHECKED BUT I HAVE NO REASON TO THINK I DIDN'T.

02:43PM 16   Q.   SO LET'S TAKE A LOOK. SO AT THE TOP OF THIS E-MAIL FROM

02:43PM 17   MR. MENDEZ, IT WRITES, MO, BROCADE, NOS AND DELL FTOS ARE

02:43PM 18   IOS-LIKE. BUT WE HAVE, BY FAR, THE MOST SIMILAR ONE. OR WE

02:44PM 19   LIKE TO SAY, WE HAVE A TRUE INDUSTRY STANDARD CLI, CORRECT?

02:44PM 20   A.   THAT'S WHAT IT SAYS.

02:44PM 21   Q.   SO WHAT MR. MENDEZ WAS SAYING HERE TO YOU AND OTHER

02:44PM 22   ENGINEERS AT ARISTA WAS THE ARISTA CLI IS THE MOST SIMILAR ONE

02:44PM 23   COMPARED TO ALL THE OTHERS OUT THERE, AND THAT'S WHY ARISTA

02:44PM 24   BELIEVES IT HAS A TRUE INDUSTRY STANDARD CLI, CORRECT?

02:44PM 25   A.   IT LOOKS LIKE THAT'S MANUEL'S OPINION.

DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:44PM   1   Q.   SO WHAT HE'S SAYING IS TO BE TRUE INDUSTRY STANDARD IS TO

02:44PM   2   COPY THE MOST CISCO CLI, CORRECT?   THAT'S YOUR UNDERSTANDING?

02:44PM   3   A.   AND IN DON'T -- THAT'S YOUR INTERPRETATION OF WHAT MANUEL

02:44PM   4   ASK SAYING.   I THINK HE'S EXPRESSING HIS OPINION.

02:44PM   5   Q.   YOU UNDERSTAND THAT WAS HIS OPINION, CORRECT?

02:44PM   6   A.   IT LOOKS TO BE HIS OPINION.

02:44PM   7   MR. PAK: YOUR HONOR, WITH THAT, I THANK THE

02:44PM   8   WITNESS -- WELL, ACTUALLY, ONE MORE IMPORTANT DOCUMENT, SORRY.

02:44PM   9   MR. NELSON WOULD BE UPSET WITH ME IF I DIDN'T GET TO THIS ONE.

02:45PM   10   Q.   EXHIBIT 171.   THIS IS ONE YOU WROTE, MR. LINCOLN DALE, SO

02:45PM   11   TAKE A LOOK AND CONFIRM THAT IT WAS AN E-MAIL YOU SENT ON

02:45PM   12   JUNE 20, 2012, TO ARIFF PREMJI, KENNETH DUDA, ANSHUL SADANA,

02:45PM   13   NATHAN KITCHEN AT ARISTA, CORRECT?

02:45PM   14   A.   THAT'S CORRECT.

02:45PM   15   Q.   AND AT THIS POINT, YOUR HONOR, I WOULD LIKE TO MOVE

02:45PM   16   EXHIBIT 171 INTO EVIDENCE?

02:45PM   17   MR. SILBERT: NO OBJECTION.

02:45PM   18   THE COURT: IT WILL BE ADMITTED.

02:45PM   19   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 171, HAVING BEEN

02:45PM   20   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

02:45PM   21   EVIDENCE.)

02:45PM   22   BY MR. PAK:

02:45PM   23   Q.   YOU ARE NOT DISPUTING, SIR, THAT YOU ARE THE AUTHOR OF THIS

02:45PM   24   E-MAIL, CORRECT?

02:45PM   25   A.   I'M NOT.

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DIRECT EXAMINATION OF MR. DALE BY MR. PAK

02:45PM 1   Q.   AND HERE YOU RIGHT, HI ARIFF, THAT SOUNDS LIKE AN EXCUSE TO

02:45PM 2   ME.   AMAZON USES JUNIPER'S NET CONF AND ARE HAPPY WITH THAT.

02:45PM 3   BUT ON THE CISCO N7K'S, THAT FRONT END, THE JUNIPER MPLS SIDE

02:46PM 4   OF THINGS, THEY USE CLI OVER SSH, EXPECT AND THAT IS THE PLACE

02:46PM 5   IN THE NETWORK THAT IT WOULD BE APPLICABLE TO, NOT THE MPLS

02:46PM 6   JUNIPER SIDE, CORRECT?

02:46PM 7   A.   SURE, YEAH.

02:46PM 8   Q.   SO WHAT YOU WERE TALKING ABOUT HERE IS A SALES OPPORTUNITY

02:46PM 9   TO AMAZON; IS THAT CORRECT?

02:46PM 10   A.   YEAH.

02:46PM 11   Q.   OKAY.   WHAT YOU WERE SAYING IS THAT AMAZON USES SOME

02:46PM 12   JUNIPER ROUTER EQUIPMENT ON THE BACK END, CORRECT?

02:46PM 13   A.   YEP.

02:46PM 14   Q.   BUT WHAT AMAZON WAS USING WAS CISCO NEXUS 7000 PRODUCTS ON

02:46PM 15   THE FRONT END, CORRECT?

02:46PM 16   A.   THAT'S CORRECT.

02:46PM 17   Q.   SO YOU WERE POINTING OUT THAT WE WERE COMPETING FOR THE

02:46PM 18   OPPORTUNITY TO REPLACE CISCO ON THE FRONT END, CORRECT?

02:46PM 19   A.   YEAH.

02:46PM 20   Q.   AND WHAT YOU SAID IS, "WE WOULD BE A PRACTICAL DROP-IN

02:46PM 21   REPLACEMENT FOR THE CISCO, GIVEN THE 99.999 PERCENT SIMILARITY

02:47PM 22   IN THE CLI."

02:47PM 23   THAT'S WHAT YOU WROTE, CORRECT?

02:47PM 24   A.   THAT'S WHAT I WROTE.

02:47PM 25   MR. PAK: AT THIS POINT, YOUR HONOR, I WOULD LIKE TO

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CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:47PM   1   PASS THE WITNESS.

02:47PM   2   THE COURT: ALL RIGHT.

02:47PM   3   CROSS-EXAMINATION, MR. SILBERT?

02:47PM   4   MR. SILBERT: THANK YOU.

02:47PM   5

02:47PM   6   **CROSS-EXAMINATION BY MR. SILBERT**

02:47PM   7

02:47PM   8   Q.   GOOD AFTERNOON, MR. DALE.

02:47PM   9   A.   GOOD AFTERNOON.

02:47PM 10   Q.   WHERE ARE YOU CURRENTLY EMPLOYED?

02:47PM 11   A.   I WORK AT GOOGLE.

02:47PM 12   Q.   AND JUST TO GET THE CHRONOLOGY STRAIGHT, BEFORE JOINING

02:47PM 13   GOOGLE WHERE WERE YOU EMPLOYED?

02:47PM 14   A.   I WAS EMPLOYED BY ARISTA.

02:47PM 15   Q.   AND WHEN DID YOU LEAVE ARISTA?

02:47PM 16   A.   I LEFT AROUND JUNE OR JULY OF THIS YEAR.

02:47PM 17   Q.   OF 2016?

02:47PM 18   A.   OF 2016, YEAH.

02:47PM 19   Q.   AND HOW LONG DID YOU WORK FOR ARISTA?

02:47PM 20   A.   FOUR AND A HALF YEARS.

02:47PM 21   Q.   AND WHERE DID YOU WORK BEFORE ARISTA?

02:48PM 22   A.   AT CISCO.

02:48PM 23   Q.   AND I BELIEVE YOU SAID THIS WITH MR. PAK, BUT HOW LONG DID

02:48PM 24   YOU WORK FOR CISCO?

02:48PM 25   A.   IT WAS AROUND 14 OR 15 YEARS, ROUGHLY.

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:48PM 1   Q.   AND CAN YOU PLEASE TELL US AGAIN WHAT YOUR POSITION WAS AT

02:48PM 2   CISCO, AT LEAST BY THE TIME YOU LEFT?

02:48PM 3   A.   DISTINGUISHED ENGINEER.

02:48PM 4   Q.   AND YOU GAVE SOME EXPLANATION OF THIS, BUT COULD YOU PLEASE

02:48PM 5   EXPLAIN WHAT DOES IT MEAN TO BE A DISTINGUISHED ENGINEER AT

02:48PM 6   CISCO?

02:48PM 7   A.   DISTINGUISHED IS A TITLE THAT YOUR MANAGER CAN'T GIVE YOU.

02:48PM 8   YOU CAN'T BE PROMOTED TO ACCEPT BY BEING NOMINATED AND I GUESS

02:48PM 9   A COMMITTEE OR A PANEL LOOKS AT IT. AND BESTOWS THE TITLE IF

02:48PM 10   YOU MEET THE CRITERIA.

02:48PM 11   Q.   IS IT CONSIDERED AN HONOR TO BE AWARDED THE TITLE OF

02:48PM 12   DISTINGUISHED ENGINEER AT CISCO?

02:48PM 13   A.   YEAH, AND I WAS PROUD OF IT AS WELL.

02:48PM 14   Q.   WHEN YOU LEFT CISCO, DID YOU LEAVE VOLUNTARILY?

02:49PM 15   A.   I DID, YES.

02:49PM 16   Q.   DID ANYBODY ASK YOU TO LEAVE IN ANY WAY?

02:49PM 17   A.   NO. THEY WANTED ME TO STAY, TRUTH BE TOLD.

02:49PM 18   Q.   DURING THE 14 YEARS OR SO THAT YOU WERE EMPLOYED AT CISCO,

02:49PM 19   DID ANYONE EVER SUGGEST TO YOU THAT YOU -- OR DID ANYONE EVER

02:49PM 20   QUESTION YOUR INTEGRITY OR ETHICS IN ANY WAY?

02:49PM 21   A.   NOT AT ALL.

02:49PM 22   Q.   DURING THE 14 YEARS YOU WERE EMPLOYED AT CISCO, DID ANYONE

02:49PM 23   SUGGEST TO YOU THAT YOU DIDN'T UNDERSTAND THE RULES FOR

02:49PM 24   HANDLING CONFIDENTIAL INFORMATION?

02:49PM 25   A.   NOT AT ALL.

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:49PM 1   Q.   HAVING WORKED IN THE INDUSTRY FOR MORE THAN 14 YEARS BY THE

02:49PM 2   TIME THAT YOU JOINED ARISTA, DID YOU FEEL THAT YOU NEEDED ANY

02:49PM 3   TRAINING ON HOW TO HANDLE ONE COMPANY'S CONFIDENTIAL

02:49PM 4   INFORMATION?

02:49PM 5   A.   NOT AT ALL, IT'S VERY, VERY STRAIGHTFORWARD.

02:49PM 6   Q.   DURING YOUR TIME AT ARISTA, DID YOU TRY TO PRESERVE THE

02:49PM 7   CONFIDENTIALITY OF THE ANY INFORMATION YOU MIGHT HAVE KNOWN

02:50PM 8   FROM CISCO OR ANY OTHER SOURCE THAT WASN'T ARISTA?

02:50PM 9   A.   ABSOLUTELY, YEAH.

02:50PM 10   Q.   LET'S TALK ABOUT THE TERM INDUSTRY STANDARD THAT MR. PAK

02:50PM 11   DISCUSSED WITH YOU.

02:50PM 12   WHEN DID YOU FIRST HEAR THAT TERM USED TO DESCRIBE THE CLI

02:50PM 13   OF AN ETHERNET SWITCH

02:50PM 14   A.   IT WOULD HAVE BEEN IN MY TIME AT CISCO.

02:50PM 15   Q.   AND IN WHAT CONTEXT AT CISCO DID YOU HEAR -- LET'S BACK UP.

02:50PM 16   WHO WAS IT THAT YOU HEARD DURING YOUR YEARS AT CISCO, USE THE

02:50PM 17   TERM INDUSTRY STANDARD TO DESCRIBE AN ETHERNET SWITCH CLI?

02:50PM 18   A.   I THINK I EVEN WROTE IN DOCUMENTS MYSELF THAT USED THAT

02:50PM 19   TERMINOLOGY.

02:50PM 20   Q.   WHILE YOU WERE A CISCO EMPLOYEE?

02:50PM 21   A.   WHILE I WAS AT CISCO, YEAH.

02:50PM 22   Q.   AND DID YOU ALSO HEAR OTHERS AT CISCO USE THE TERM INDUSTRY

02:50PM 23   STANDARD TO REFER TO A CISCO CLI FOR AN ETHERNET SWITCH?

02:50PM 24   A.   YEAH.

02:51PM 25   Q.   AND WHEN YOU USED THE TERM INDUSTRY STANDARD WITH RESPECT

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:51PM 1   TO THE CLI, WHAT DID YOU MEAN BY IT?

02:51PM 2   A.   IT'S A STANDARD THAT EVERYONE IN THE INDUSTRY UNDERSTANDS.

02:51PM 3   Q.   OKAY. WHILE YOU WERE AT CISCO, DID YOU KNOW THAT OTHER

02:51PM 4   SWITCH VENDORS HAD CLI'S THAT WERE SIMILAR TO CISCO'S?

02:51PM 5   A.   I DID, YES.

02:51PM 6   Q.   HOW DID YOU LEARN THAT FACT?

02:51PM 7   A.   CERTAINLY TALKING TO CUSTOMERS, TALKING TO ENGINEERS.

02:51PM 8   USING DEVICES WHEN DOING TESTING FOR INTEROPERABILITY.

02:51PM 9   Q.   DURING THE 14 OR SO YEARS THAT YOU WERE AT CISCO, DID

02:51PM 10   ANYONE EVER SUGGEST TO YOU THAT THERE WAS ANYTHING IMPROPER

02:51PM 11   ABOUT OTHER SWITCH VENDORS HAVING CLI'S THAT WERE SIMILAR TO

02:51PM 12   CISCO'S CLI?

02:51PM 13   A.   NOT TO MY KNOWLEDGE, NO.

02:51PM 14   Q.   DURING THE SEVERAL YEARS THAT YOU WERE AT ARISTA BEFORE

02:52PM 15   THIS LAWSUIT WAS FILED, DID ANYONE EVER SUGGEST TO YOU THAT

02:52PM 16   THERE WAS ANYTHING IMPROPER ABOUT ANOTHER SWITCH VENDOR USING

02:52PM 17   THE SAME CLI COMMANDS THAT CISCO USED?

02:52PM 18   A.   NO, I DON'T BELIEVE SO.

02:52PM 19   Q.   WHILE YOU WERE WORKING AT ARISTA, DID YOU THINK THAT HAVING

02:52PM 20   ARISTA SWITCHES RECOGNIZE THE SAME CLI COMMANDS THAT CISCO

02:52PM 21   SWITCHES RECOGNIZE WAS SOMETHING YOU HAD TO HIDE IN ANY WAY?

02:52PM 22   A.   NOT AT ALL, NO.

02:52PM 23   Q.   DID YOU TRY TO HIDE THAT FACT?

02:52PM 24   A.   I DON'T THINK WE DID.

02:52PM 25   Q.   OKAY. LET'S TALK ABOUT THE PRESENTATION THAT THE VIDEO WAS

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:52PM 1   SHOWN IN COURT HERE.

02:52PM 2   WHY DID YOU USE THE EXPRESSION, WHY DID YOU SAY THAT'S MY

02:52PM 3   JOKE FOR IOS OR, I'M SORRY I DON'T REMEMBER THE EXACT WORDING,

02:52PM 4   BUT I THINK YOU KNOW THE STATEMENT.

02:52PM 5   A.   YEAH, SO LOOKING AT IT, I'M GUESSING I WAS PRESENTING IN

02:52PM 6   THE AFTERNOON, MAYBE LATE AFTERNOON. YOU KNOW, IT'S A VERY

02:53PM 7   DRAWING TECHNICAL TOPIC, YOU WANT TO BE INTERESTING TO AN

02:53PM 8   AUDIENCE. SO I THINK THE INTRODUCTION SHOWED IT AS WELL, I WAS

02:53PM 9   TRYING TO BE UPBEAT.

02:53PM 10   Q.   I'M SURE THE AUDIENCE APPRECIATED THAT. WHAT POINT WERE

02:53PM 11   YOU TRYING TO MAKE?

02:53PM 12   A.   THE COMMAND-LINE INTERFACE IS VERY, VERY SIMILAR, AND THE

02:53PM 13   POINT I WAS TRYING TO MAKE THAT WAS FOR MANY PEOPLE WHO HAVE,

02:53PM 14   SAY, PAID FOR TRAINING, THEY DON'T NEED TO PAY FOR ADDITIONAL

02:53PM 15   TRAINING. THE COMMAND SHOULD BE FAMILIAR TO THEM. THAT WAS

02:53PM 16   THE PRIMARY POINT.

02:53PM 17   Q.   WHEN YOU MADE THAT STATEMENT, AT THE TIME YOU MADE IT, DID

02:53PM 18   YOU THINK THAT IT WAS ANYTHING THAT CISCO WOULD TAKE ISSUE WITH

02:53PM 19   IF CISCO HEARD IT?

02:53PM 20   A.   NO, I DIDN'T.

02:53PM 21   Q.   WOULD YOU PLEASE LOOK AT EXHIBIT 165, WHICH IS THE SLIDE

02:53PM 22   DECK, IT'S IN EVIDENCE, THAT WAS USED AT THAT PRESENTATION. IF

02:54PM 23   WE COULD LOOK AT THE SAME SLIDE THAT MR. PAK SHOWED YOU.

02:54PM 24   IT MIGHT BE EASIER TO LOOK ON THE SCREEN THERE, YEAH. CAN

02:54PM 25   YOU POINT OUT SOME OF THE ACTUAL CLI COMMANDS THAT ARE

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:54PM 1   REFLECTED IN THAT BLOCK OF TEXT IN WHITE ON THE RIGHT.

02:54PM 2   A.   YEAH, SURE. SO ENABLE IS THE FIRST COMMAND WHEN YOU LOG ON

02:54PM 3   THE SWITCH, SO THAT'S A COMMAND. UNDERNEATH THAT'S ANOTHER

02:54PM 4   COMMAND, COMP T WHICH STANDS FOR CONFIGURATION FROM TERMINAL.

02:54PM 5   UNDER THAT IS INT ET-17. SO INT IS A SHORTCUT FOR INTERFACE.

02:54PM 6   UNDERNEATH THAT IS SWITCHPORT, AND UNDERNEATH THAT IS

02:54PM 7   SWITCHPORT ACCESS VLAN 10. AND THEN THERE'S SH-INT-ET17, TWO

02:54PM 8   LINES UNDER THAT.

02:54PM 9   Q.   LEAVING ASIDE CISCO AND ARISTA, TO YOUR KNOWLEDGE, WOULD

02:54PM 10   THOSE COMMANDS ALSO WORK IN OTHER VENDORS' ETHERNET SWITCHES?

02:55PM 11   A.   YEAH, I WOULD SAY YES. SO I WOULD -- IF I'M NOT MISTAKEN,

02:55PM 12   THEY WILL WORK ON A DELL SWITCH, A BROCADE SWITCH, AN IBM

02:55PM 13   SWITCH, PROBABLY OTHERS.

02:55PM 14   Q.   AND YOU MADE A COMMENT WHILE MR. PAK WAS ASKING YOU

02:55PM 15   QUESTIONS ABOUT THE FACT THAT THE OUTPUT THAT'S SHOWN HERE, YOU

02:55PM 16   BELIEVE WOULD BE DIFFERENT FROM THE OUTPUT ON A CISCO SWITCH.

02:55PM 17   CAN YOU EXPLAIN WHAT YOU MEANT BY THAT, PLEASE?

02:55PM 18   A.   YEAH, SO IN THIS EXAMPLE HERE, IT'S PROBABLY WHY I CHOSE TO

02:55PM 19   CREATE A SCREEN SHOT LIKE THIS, THE SWITCH WAS DEMONSTRATING

02:55PM 20   THAT VLAN 10 DIDN'T EXIST, SO IT WAS CREATING IT.

02:55PM 21   I'M FAIRLY SURE THAT IS SOMETHING THAT ARISTA DOES THAT I'M

02:55PM 22   NOT SURE CISCO DOES. THE OUTPUT FROM THE SHOW INTERFACE

02:55PM 23   COMMAND IS LIKELY DIFFERENT AS WELL, IT'S PROBABLY FORMATTED

02:55PM 24   DIFFERENT.

02:56PM 25   THAT MAY BE THE SAME KIND OF INFORMATION SHOWN THERE.

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:56PM   1   THERE'S ONLY SO MANY THINGS YOU CAN SHOW ON AN INTERFACE BUT

02:56PM   2   IT'S PROBABLY FORMATTED SLIGHTLY DIFFERENTLY.

02:56PM   3   Q.   THANK YOU, YOU CAN PUT THAT DOWN. MR. PAK ASKED YOU ABOUT

02:56PM   4   YOUR ACTIVITIES AT ARISTA PROMOTING ARISTA SWITCHES TO

02:56PM   5   CUSTOMERS, DO YOU RECALL THAT?

02:56PM   6   A.   I DO, YEAH.

02:56PM   7   Q.   OKAY. AND WHAT -- WHAT IN GENERAL WAS THE SALES PITCH THAT

02:56PM   8   YOU USED WITH CUSTOMERS ABOUT ARISTA SWITCHES?

02:56PM   9   A.   ARISTA HAD A VERY -- WELL, HAS A VERY TARGETED SET OF

02:56PM   10   PRODUCTS, A TARGETED SET OF PRODUCTS THAT ARE TARGETED

02:56PM   11   SPECIFICALLY AT DATA CENTER DEPLOYMENTS. THE ATTRIBUTES THAT

02:56PM   12   MADE THEM COMPELLING FOR MANY CUSTOMERS, THEY WERE TYPICALLY

02:57PM   13   FASTER, THEY WERE OFTEN CHEAPER, THEY WERE TYPICALLY MORE

02:57PM   14   EFFICIENT, THEY WERE PURPOSEFULLY BUILT FOR THAT FUNCTION, BUT

02:57PM   15   IT WAS JUST A BETTER PRODUCT COMPARED TO OTHERS.

02:57PM   16   Q.   DID YOU MARKET ARISTA SWITCHES AS BEING THE SAME AS CISCO

02:57PM   17   SWITCHES?

02:57PM   18   A.   THAT CERTAINLY WASN'T A KEY POINT OF ANY KIND OF MARKETING.

02:57PM   19   NO, NOT AT ALL.

02:57PM   20   Q.   OKAY. WOULD YOU LOOK AT EXHIBIT 171, AGAIN, PLEASE, WHICH

02:57PM   21   IS IN EVIDENCE. MR. PAK FOCUSED YOU ON THE SENTENCE AT THE

02:57PM   22   TOP -- THE BOTTOM SENTENCE OF THE TOP E-MAIL THERE.

02:57PM   23   FIRST OF ALL, CAN YOU EXPLAIN, PLEASE, WHAT WAS THE CONTEXT

02:57PM   24   OF THIS E-MAIL?

02:57PM   25   A.   I THINK THE CONTEXT WAS ARIFF WAS TALKING TO AMAZON ABOUT

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:57PM 1   SOME OPPORTUNITIES OF DEPLOYING ARISTA SWITCHES WITHIN AMAZON.

02:58PM 2   Q.   AND WHEN YOU WROTE THIS E-MAIL WERE YOU FAMILIAR WITH

02:58PM 3   AMAZON'S NETWORK OPERATIONS?

02:58PM 4   A.   I WAS, YES.

02:58PM 5   Q.   DID AMAZON USE THE CLI INTERFACE TO CONFIGURE SWITCHES?

02:58PM 6   A.   THEY -- YEAH. THE SHORT ANSWER IS YES. BUT THE COMPLEXITY

02:58PM 7   WAS THAT THEY USED EXPECT AS A WAY OF TALKING TO THEM. SO IT

02:58PM 8   GENERALLY WASN'T THE HUMAN USING THE COMMAND-LINE INTERFACE, IT

02:58PM 9   WAS A MACHINE USING IT.

02:58PM 10   Q.   AND CAN YOU JUST EXPLAIN A LITTLE MORE WHAT THAT MEANS.

02:58PM 11   WHAT IS "EXPECT?"

02:58PM 12   A.   SO EXPECT IS, I GUESS IT'S A FORM OF SCREEN SCRAPING. SO

02:58PM 13   IT'S HOW YOU WOULD WRITE AUTOMATION WHERE A COMPUTER IS

02:58PM 14   PRETENDING TO BE HUMAN. SO IT'S GOING TO TYPE THINGS IN AND

02:58PM 15   LOOK AT THE RESPONSES THAT COME BACK. AND IT'S EXPECTING TO

02:58PM 16   RECEIVE BACK SPECIFIC SCREENS OR TEXT.

02:59PM 17   Q.   OKAY. AND DOWN AT THE NEXT SENTENCE, THE LAST SENTENCE

02:59PM 18   THERE, WHY DID YOU SAY 99.999 PERCENT SIMILARITY IN THE CLI?

02:59PM 19   A.   THE PARTICULAR ROLE IN THE NETWORK THAT THIS TOPIC OF

02:59PM 20   CONVERSATION WAS ABOUT, WAS A VERY, THE NETWORK DEVICE WAS

02:59PM 21   PERFORMING A VERY, VERY SIMPLE FUNCTION, NOT VERY MANY

02:59PM 22   FUNCTIONS AT ALL.

02:59PM 23   I THINK 99.999 PERCENT, I THINK I WAS TRYING TO EMPHASIZE

02:59PM 24   FOR THE SUBSET OF FUNCTIONS THAT WERE BEING USED, YEAH, IT WAS

02:59PM 25   THE SAME.

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

02:59PM 1   Q.   OKAY. THANK YOU. AND WHY DID YOU SAY PRACTICAL DROP-IN

02:59PM 2   REPLACEMENT?

02:59PM 3   A.   TO, PRACTICAL DROP-IN REPLACEMENT AS IN AMAZON WOULDN'T

03:00PM 4   HAVE TO CHANGE MUCH, IF ANYTHING OF THEIR AUTOMATION THAT THEY

03:00PM 5   WERE USING.

03:00PM 6   Q.   YOU SAID THAT ABOUT ARISTA SWITCHES. DO YOU THINK THAT

03:00PM 7   THAT SAME FACT WOULD BE TRUE FOR OTHER VENDORS, ETHERNET

03:00PM 8   SWITCHES?

03:00PM 9   MR. PAK: OBJECTION. LACKS FOUNDATION, YOUR HONOR.

03:00PM 10   EXPERT TESTIMONY.

03:00PM 11   MR. SILBERT: HE'S TESTIFIED THAT HE'S FAMILIAR WITH

03:00PM 12   OTHER VENDOR'S CLI'S.

03:00PM 13   THE COURT: OVERRULED. YOU MAY ANSWER.

03:00PM 14   THE WITNESS: SO YES, MANY OTHER VENDORS' PRODUCTS

03:00PM 15   COULD HAVE BEEN DROPPED INTO THE SAME ROLE IN THE SAME WAY.

03:00PM 16   Q.   WHEN YOU WERE -- WELL, STRIKE THAT. LET ME ASK YOU ABOUT

03:00PM 17   ANOTHER DOCUMENT THAT --

03:00PM 18   THE COURT: COULD WE TAKE OUR BREAK THEN IF YOU ARE

03:00PM 19   GOING TO SWITCH.

03:00PM 20   MR. SILBERT: YES, PLEASE.

03:00PM 21   THE COURT: LET'S TAKE OUR AFTERNOON BREAK, LET'S

03:00PM 22   MAKE IT 15 MINUTES AND WE WILL COME BACK AT A QUARTER PAST.

03:00PM 23   (WHEREUPON A RECESS WAS TAKEN.)

03:17PM 24   THE COURT: PLEASE BE SEATED, EVERYONE. ALL OF OUR

03:17PM 25   JURORS ARE HERE. ALL RIGHT. MR. DALE IS COMING BACK TO THE

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

03:17PM 1   WITNESS STAND, AND MR. SILBERT, YOU MAY CONTINUE WITH YOUR

03:17PM 2   CROSS-EXAMINATION.

03:17PM 3   MR. SILBERT: THANK YOU VERY MUCH, YOUR HONOR.

03:17PM 4   Q.   GOOD AFTERNOON, MR. DALE.

03:17PM 5   A.   GOOD AFTERNOON.

03:17PM 6   Q.   COULD I ASK YOU TO PLEASE TURN TO EXHIBIT 168.

03:17PM 7   AND IF YOU RECALL, MR. PAK ASKED YOU SOME QUESTIONS ABOUT

03:18PM 8   THE FIRST SENTENCE AT THE TOP OF THIS E-MAIL.

03:18PM 9   A.   YEAH.

03:18PM 10 Q.   AND THE E-MAIL SAYS MO, BROCADE, NOS, AND DELL, FTOS ARE

03:18PM 11 IOS-LIKE, BUT WE HAVE BY FAR THE MOST SIMILAR ONE, OR AS WE

03:18PM 12 LIKE IT SAY, WE HAVE A TRUE INDUSTRY STANDARD CLI.

03:18PM 13   DO YOU SEE THAT?

03:18PM 14 A.   I SEE THAT, YES.

03:18PM 15 Q.   HOW MANY ETHERNET SWITCH OPERATING SYSTEMS DOES CISCO HAVE?

03:18PM 16 A.   THEY'VE GOT AT LEAST FOUR; COULD BE FIVE OR SIX.

03:18PM 17 Q.   OKAY. AND MR. PAK ASKED YOU SOME QUESTIONS ABOUT THE NEXUS

03:18PM 18 7K AND NX-OS, WHAT HE REFERRED TO, I THINK, WAS THE NEXT

03:18PM 19 GENERATION SWITCH OR SOMETHING LIKE THAT. DOES THAT SWITCH,

03:18PM 20 DOES THAT USE THE IOS OPERATING SYSTEM?

03:18PM 21 A.   NO, IT DOES NOT.

03:19PM 22 Q.   WHAT OPERATING SYSTEM DOES IT USE?

03:19PM 23 A.   IT USES AN OPERATING SYSTEM CALLED NX-OS.

03:19PM 24 Q.   AND HOW DOES THE NX-OS -- STRIKE THAT.

03:19PM 25   DOES NX-OS HAVE A CLI?

CROSS-EXAMINATION OF MR. DALE BY MR. SILBERT

03:19PM 1   A.   IT DOES, YES.

03:19PM 2   Q.   HOW DOES THE NX-OS CLI, HOW DO THE NX-OS CLI COMMANDS

03:19PM 3   COMPARE TO THE CLI COMMANDS IN IOS?

03:19PM 4   A.   THEY ARE MOSTLY SIMILAR.

03:19PM 5   Q.   ARE THEY ALL THE SAME?

03:19PM 6   A.   NO, THEY'RE NOT.

03:19PM 7   Q.   AND SO IF SOMETHING IS NOT IOS-LIKE, DOES THAT NECESSARILY

03:19PM 8   MEAN THAT IT'S NOT USING COMMANDS FROM A CISCO OPERATING

03:19PM 9   SYSTEM?

03:19PM 10 A.   I GUESS.

03:19PM 11 Q.   OKAY. DO YOU KNOW WHETHER CISCO IS ACCUSING ARISTA OF

03:19PM 12 COPYING COMMANDS SPECIFICALLY FROM NX-OS, IN SOME CASES FROM

03:20PM 13 NX-OS RATHER THAN IOS IN THIS CASE?

03:20PM 14 A.   I DON'T ACTUALLY KNOW IF THEY ARE OR NOT.

03:20PM 15 Q.   OKAY. FINAL SUBJECT.

03:20PM 16   YOU SAID TO MR. PAK WHEN HE WAS ASKING YOU SOME QUESTIONS,

03:20PM 17 YOU MENTIONED SOMETHING ABOUT FACTORS THAT GO CHOOSING A CLI

03:20PM 18 COMMAND, DO YOU RECALL THAT?

03:20PM 19 A.   I DO, YES.

03:20PM 20 Q.   WHAT ARE THE FACTORS THAT GO INTO CHOOSING A CLI COMMAND?

03:20PM 21 A.   SO CLI COMMANDS, TYPICALLY YOU ARE TRYING TO BE AS LOGICAL

03:20PM 22 AND ALMOST AS SIMPLE AS YOU CAN BE IN A NONAMBIGUOUS WAY.

03:20PM 23   SO YOU ARE TRYING TO USE COMMANDS OR WORDS THAT ARE

03:20PM 24 UNAMBIGUOUS IN THEIR MEANING. YOU ARE TRYING TO USE INDUSTRY

03:20PM 25 STANDARD TERMS, AND YOU ARE TRYING TO -- OFTEN THINGS ARE

REDIRECT EXAMINATION OF MR. DALE BY MR. PAK

03:21PM   1   GROUPED TOGETHER, OR AT LEAST THAT'S HOW PEOPLE WOULD SEE

03:21PM   2   COMMANDS.

03:21PM   3   SO IF I WAS TO GIVE AN EXAMPLE, SHOW LIKE THE ROUTE FOR

03:21PM   4   EXAMPLE, SHOW MEANS THAT YOU WANT TO SEE SOMETHING IN THE

03:21PM   5   OPERATION. IP, BECAUSE IT'S RELATED TO TCP IP AND THEN ROUTE

03:21PM   6   BECAUSE IT'S RELATED TO A ROUTE TABLE OR A ROUTE.

03:21PM   7   MR. SILBERT: OKAY. THANK YOU VERY MUCH.

03:21PM   8   NO FURTHER QUESTIONS.

03:21PM   9   THE COURT: THANK YOU, REDIRECT FOR THIS WITNESS?

03:21PM 10   MR. PAK: YES, VERY BRIEF, YOUR HONOR.

03:21PM 11

03:21PM 12   **REDIRECT EXAMINATION BY MR. PAK**

03:21PM 13

03:21PM 14   BY MR. PAK:

03:21PM 15   Q.   MR. DALE, ONE OF THE THINGS THAT MR. SILBERT ASKED YOU

03:21PM 16   ABOUT WERE SOME OF THE OTHER THINGS THAT YOU TOLD CUSTOMERS

03:21PM 17   WITH RESPECT TO ARISTA SWITCHES, CORRECT?

03:21PM 18   A.   YES.

03:21PM 19   Q.   BUT ONE OF THE THINGS YOU DID TELL ARISTA'S CUSTOMERS ABOUT

03:21PM 20   YOUR SWITCHES THAT WAS IT HAD A CLI THAT WAS THE SAME AS CISCO

03:22PM 21   CLI, CORRECT?

03:22PM 22   A.   YES.

03:22PM 23   Q.   AND YOU ALSO TALKED BRIEFLY IN YOUR EXAMINATION BY

03:22PM 24   MR. SILBERT REGARDING OTHER VENDORS AND THEIR USE OF CLI'S; DO

03:22PM 25   YOU RECALL THAT?

REDIRECT EXAMINATION OF MR. DALE BY MR. PAK

03:22PM 1   A.   YES.

03:22PM 2   Q.   BUT AT THE TIME YOU WERE DEPOSED, SIR, ISN'T IT TRUE THAT

03:22PM 3   YOU HAD NOT ANALYZED ANY OF THE CLI INTERFACES FROM ANY OTHER

03:22PM 4   VENDOR OTHER THAN CISCO AND ARISTA; ISN'T THAT TRUE?

03:22PM 5   A.   THAT'S CORRECT.

03:22PM 6   Q.   AND AT THE TIME YOU WERE DEPOSED IN THIS CASE, YOU HAD NOT

03:22PM 7   LOOKED AT ANY OF THE OTHER COMMAND-LINE INTERFACES FROM THESE

03:22PM 8   OTHER VENDORS OTHER THAN CISCO AND ARISTA TO SEE HOW SIMILAR OR

03:22PM 9   DISSIMILAR THE SPECIFIC COMMANDS AND OUTPUTS WOULD BE, CORRECT?

03:22PM 10   A.   THAT'S CORRECT.

03:22PM 11   Q.   AND FINALLY WITH RESPECT TO THE SELECTION OF COMMANDS, YOU

03:22PM 12   GAVE SOME TESTIMONY NOW ABOUT THE FACTORS, BUT YOU STAND BY ALL

03:22PM 13   THE OTHER TESTIMONY YOU GAVE WHEN I WAS ASKING YOU QUESTIONS

03:22PM 14   ABOUT THE CREATION OF CLI COMMANDS, CORRECT?

03:22PM 15   A.   YES.

03:22PM 16   MR. PAK: THAT'S IT, YOUR HONOR.

03:22PM 17   THE COURT: OKAY. ANYTHING ELSE, MR. SILBERT?

03:23PM 18   MR. SILBERT: NOTHING FURTHER.

03:23PM 19   THE COURT: MAY MR. DALE BE EXCUSED?

03:23PM 20   MR. PAK: YES.

03:23PM 21   THE COURT: MR. DALE, THANK YOU FOR YOUR TESTIMONY.

03:23PM 22   YOU ARE FREE TO GO.

03:23PM 23   MR. PAK, YOUR NEXT WITNESS?

03:23PM 24   MR. PAK: YES, YOUR HONOR. WE ARE GOING TO BE

03:23PM 25   CALLING MR. PRADEEP KATHAIL.

03:23PM 1

03:23PM 2 **PRADEEP KATHAIL,**

03:23PM 3 BEING CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF,

03:23PM 4 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS

03:24PM 5 FOLLOWS:

03:24PM 6 THE WITNESS: YES, I DO.

03:24PM 7 THE CLERK: THANK YOU, SIR. PLEASE BE SEATED.

03:24PM 8 AND IF YOU WOULD PLEASE STATE YOUR NAME AND SPELL YOUR LAST

03:24PM 9 NAME FOR THE RECORD.

03:24PM 10 THE WITNESS: PRADEEP KUMAR KATHAIL. LAST NAME IS

03:24PM 11 K-A, T AS IN TOM, H-A-I-L.

03:24PM 12

03:24PM 13 **DIRECT EXAMINATION BY MR. PAK**

03:24PM 14

03:24PM 15 BY MR. PAK:

03:24PM 16 Q.   GOOD AFTERNOON, MR. KATHAIL.

03:24PM 17 A.   GOOD AFTERNOON.

03:24PM 18 Q.   I KNOW THAT BOTH OF US TEND TO SPEAK VERY FAST SOMETIMES,

03:24PM 19 SO I'M GOING TO ASK YOU TO SLOW DOWN TODAY. IT'S VERY

03:24PM 20 IMPORTANT THAT THE JURY CAN HEAR YOU CLEARLY AND THAT WE HAVE A

03:24PM 21 CLEAR RECORD, OKAY.

03:25PM 22 SO CAN YOU PLEASE INTRODUCE YOURSELF TO THE JURY, WHO ARE

03:25PM 23 YOU?

03:25PM 24 A.   MAY NAME IS PRADEEP KUMAR KATHAIL.

03:25PM 25 Q.   AND WHERE DO YOU WORK, SIR?

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:25PM 1   A.   I WORK AT CISCO SYSTEMS.

03:25PM 2   Q.   AND WHAT IS YOUR CURRENT TITLE AT CISCO?

03:25PM 3   A.   MY CURRENT TITLE IS CHIEF NETWORK ARCHITECT.

03:25PM 4   Q.   AND CAN YOU BRIEFLY DESCRIBE TO THE JURY WHAT YOU DO AT

03:25PM 5   CISCO AS THE CHIEF NETWORK ARCHITECT?

03:25PM 6   A.   I AM THE CHIEF SOFTWARE ARCHITECT, AND MY TEAM AND I ARE

03:25PM 7   RESPONSIBLE FOR CREATING SOFTWARE STRATEGY AND SOFTWARE FOR

03:25PM 8   ROUTING PLATFORMS AT CISCO.

03:25PM 9   Q.   AND WHERE DO YOU LIVE, SIR?

03:25PM 10   A.   I LIVE IN LOS ALTOS, CALIFORNIA.

03:25PM 11   Q.   CAN YOU BRIEFLY TELL US ABOUT YOUR FAMILY?

03:25PM 12   A.   I HAVE TWO KIDS, MARRIED.

03:25PM 13   Q.   OKAY. CAN YOU BRIEFLY SUMMARIZE YOUR EDUCATIONAL

03:25PM 14   BACKGROUND FOR THE JURY?

03:25PM 15   A.   I DID MY BACHELOR'S DEGREE FROM JABALPUR COLLEGE IN

03:26PM 16   ELECTRONICS AND TELECOMMUNICATIONS, WHICH IS IN INDIA. AND I

03:26PM 17   DID MY MASTER'S FROM IIT ROORKEE IN COMPUTER SCIENCE IN 1985.

03:26PM 18   Q.   AND THAT WAS JABALPUR, J-A-B-A-L-P-U-R?

03:26PM 19   A.   YES, THAT'S CORRECT.

03:26PM 20   Q.   AND THEN ROORKEE, R-O-O-R-K-E-E, IN INDIA; IS THAT CORRECT?

03:26PM 21   A.   THAT'S CORRECT.

03:26PM 22   Q.   AND TELL US A LITTLE BIT ABOUT YOUR PROFESSIONAL EXPERIENCE

03:26PM 23   BEFORE YOU DECIDED TO JOIN CISCO?

03:26PM 24   A.   AFTER I GRADUATED, I WORKED AT CONSULTANT FOR IBM THROUGH

03:26PM 25   DATA CONSULTING SERVICES. I WAS IN THE COMPUTER SOFTWARE OVER

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:26PM 1   THERE. FROM THERE I JOINED A COMPANY CALLED SITA, S-I-T-A, AND

03:26PM 2   THEY PROVIDED THE NETWORK CONNECTIVITY FOR ALL THE AIRLINES IN

03:26PM 3   THE WORLD AND I WAS DOING THE AUTOMATION.

03:26PM 4   AFTER LEAVING SITA, I DID A SMALL STINT WITH NOVELL, THAT

03:26PM 5   WAS A NETWORKING COMPANY. THEN I JOINED APPLE COMPUTERS, I WAS

03:27PM 6   WORKING ON MAC OS SOFTWARE. AND THEN I JOINED CISCO.

03:27PM 7   Q.   AND SO WHILE YOU WERE AT APPLE YOU WERE WORKING ON THE MAC

03:27PM 8   OS; IS THAT CORRECT?

03:27PM 9   A.   YES.

03:27PM 10 Q.   OKAY. AND WHEN DID YOU JOIN CISCO?

03:27PM 11 A.   OVER BETWEEN THE YEARS AGO, AROUND 1997.

03:27PM 12 Q.   OKAY. SO SINCE 1997, YOU HAVE BEEN WORKING AT CISCO FOR

03:27PM 13 ABOUT 20 YEARS; IS THAT CORRECT?

03:27PM 14 A.   YES.

03:27PM 15 Q.   AND THIS NEW TITLE THAT YOU HAVE AS CHIEF ARCHITECT, HOW

03:27PM 16 LONG HAVE YOU HAD THAT TITLE?

03:27PM 17 A.   ABOUT THREE YEARS.

03:27PM 18 Q.   AND ARE YOU, SIR, A NAMED INVENTOR ON ANY UNITED STATES

03:27PM 19 PATENTS?

03:27PM 20 A.   YES, MANY.

03:27PM 21 Q.   OKAY. AND APPROXIMATELY HOW MANY?

03:27PM 22 A.   ABOUT 17 OR SO.

03:27PM 23 Q.   SO LET'S DIVE INTO THE SOME OF THE RELEVANT TECHNOLOGIES

03:27PM 24 AND PRODUCTS AT ISSUE IN THIS CASE. AGAIN, WE ARE TALKING

03:27PM 25 ABOUT IOS, THAT'S A CISCO OPERATING SYSTEM, CORRECT?

03:27PM 1   A.   YES.

03:27PM 2   Q.   AND CAN YOU JUST GENERALLY TELL US ABOUT IOS?

03:28PM 3   A.   SO IOS IT STANDS FOR INTERNETWORK OPERATING SYSTEM.   AND

03:28PM 4   IOS IS THE OPERATING SYSTEM, IT RUNS ON ALL THE CISCO ROUTING

03:28PM 5   AND SWITCHES DEVICES, AND THESE ARE THE DEVICES WHICH MAKE

03:28PM 6   VARIOUS NETWORKS WORK.

03:28PM 7   Q.   OKAY. AND AGAIN, JUST TO REMIND US, YOU MENTIONED

03:28PM 8   SWITCHES, WHAT ARE SWITCHES?

03:28PM 9   A.   SWITCHES ARE THE DEVICES BASICALLY WHICH SEND THE PACKETS

03:28PM 10   TO CONNECT MULTIPLE COMPUTERS. MOST OF THE TIME SWITCHES ARE

03:28PM 11   USED IN THE DATA CENTER WHERE SERVERS RESIDE, AND THAT'S HOW

03:28PM 12   YOU ACCESS ALL YOUR WEBSITES.

03:28PM 13   Q.   WONDERFUL.

03:28PM 14   MAYBE YOU CAN PULL THE MIC A LITTLE BIT CLOSER TO YOU?

03:28PM 15   THE COURT: I THINK IF YOU JUST SPEAK A LITTLE BIT

03:28PM 16   SLOWER, I THINK IT'S THE SPEED.

03:28PM 17   BY MR. PAK:

03:28PM 18   Q.   DOES CISCO HAVE OTHER FLAVORS OF OPERATING SYSTEMS OTHER

03:28PM 19   THAN THE CLASSIC IOS?

03:28PM 20   A.   CISCO IS ALWAYS EVOLVING THEIR OPERATING SYSTEMS AND

03:29PM 21   BRINGING IN THE NEW AND MODERN CONCEPT INTO THE OPERATING

03:29PM 22   SYSTEM. CISCO HAS THREE OTHER OPERATING SYSTEMS. IOS XE, IOS

03:29PM 23   XR, AND NX-OS.

03:29PM 24   Q.   AND BRIEFLY CAN YOU EXPLAIN TO THE JURY WHAT THESE OTHER

03:29PM 25   THREE OPERATING SYSTEMS ARE USED FOR?

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:29PM 1   A.   SO VERY BRIEFLY, IOS XE IS AN OPERATING SYSTEM WHICH IS

03:29PM 2   USED IN THE ENTERPRISE. SO IOS XE WOULD BE USED IN THE SUPPORT

03:29PM 3   ROOM IF I NEEDED NETWORKING DEVICES INSTALLED IN THIS

03:29PM 4   COURTROOM.

03:29PM 5   AND NX-OS IS THE OPERATING SYSTEM WHICH IS TYPICALLY USED

03:29PM 6   IN THE DATA CENTER WHERE A LOT OF SERVERS AND COMPUTERS RESIDE.

03:29PM 7   AND IOS XR IS THE OPERATING SYSTEM WHICH IS USED BY SERVICE

03:29PM 8   PROVIDER WHICH BASICALLY MAKES UP YOUR INTERNET.

03:29PM 9   Q.   OKAY. SO WHEN YOU SAY SERVICE PROVIDERS, ARE YOU TALKING

03:29PM 10   ABOUT TELEPHONE COMPANIES AND CABLE COMPANIES?

03:29PM 11   A.   YES. PEOPLE LIKE AT&T, VERIZON AND COMCAST.

03:30PM 12   Q.   AND DID YOU PERSONALLY WORK ON IOS XR?

03:30PM 13   A.   YES, I DID.

03:30PM 14   Q.   AND WHEN DID IOS XR SHIP?

03:30PM 15   A.   I BELIEVE AROUND 2004.

03:30PM 16   Q.   AND AT A HIGH LEVEL, WHAT ARE SOME OF THE DIFFERENCES

03:30PM 17   BETWEEN NX-OS AND IOS XR COMPARED TO THE CLASSIC IOS OPERATING

03:30PM 18   SYSTEM?

03:30PM 19   A.   BOTH THESE OPERATING SYSTEMS, NX-OS AND IOS XR, ARE VERY

03:30PM 20   MODULAR AND SELF HEALING.

03:30PM 21   Q.   SO YOU SAID MODULAR, CORRECT?

03:30PM 22   A.   YES.

03:30PM 23   Q.   AND CAN YOU EXPLAIN BRIEFLY TO THE JURY WHAT YOU MEAN BY

03:30PM 24   MODULAR WHEN YOU ARE TALKING ABOUT OPERATING SYSTEM DESIGN?

03:30PM 25   A.   IN THE OPERATING SYSTEM AND SOFTWARE LINGO, MODULAR MEANS

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:30PM 1   TAKING RELATED PIECES OF SOFTWARE AND PUTTING THEM INTO A

03:30PM 2   SEPARATE MODULE SO THAT IF SOMETHING HAPPENS TO ONE MODULE, IT

03:30PM 3   DOESN'T IMPACT ALL THE OTHER MODULES.

03:30PM 4   YOU CAN THINK OF MODULAR AS THE MODULAR FURNITURE YOU HAVE

03:31PM 5   IN YOUR LIVING ROOM, AND YOU CAN MOVE THAT FURNITURE AROUND,

03:31PM 6   YOU CAN ADD NEW PIECES WITHOUT THROWING AWAY EVERYTHING.

03:31PM 7   Q.   AND JUST GOING BACK TO THE 1998 TO 1999 TIMEFRAME WHILE YOU

03:31PM 8   WERE EMPLOYED BY CISCO, WHAT TYPE OF PROJECTS DID YOU WORK ON

03:31PM 9   AT THAT TIME?

03:31PM 10 A.   I WAS WORKING ON IOS XR, AND ONE OF THE PROJECTS I WAS

03:31PM 11 WORKING ON WAS CALLED SYSDB.

03:31PM 12 Q.   AND THAT'S SYSDB; IS THAT CORRECT?

03:31PM 13 A.   THAT'S CORRECT.

03:31PM 14 Q.   AND CAN YOU TELL US ABOUT WHAT SYSDB IS?

03:31PM 15 A.   SYSDB, SO DB STANDS FOR DATABASE, SO SYSDB IS A CENTRALIZED

03:31PM 16 DATABASE WHICH IS PARTS OF IOS XR.

03:31PM 17 Q.   AND WHAT ARE SOME OF THE BENEFITS FROM AN OPERATING SYSTEM

03:31PM 18 PERSPECTIVE OF HAVING A SYSDB COMPONENT IN THE OPERATING

03:31PM 19 SYSTEM?

03:31PM 20 A.   SYSDB IS THE COMPONENT WHICH PROVIDES THE MODULARITY AND

03:32PM 21 SELF HEALING CAPE ACT FOR IOS XR.

03:32PM 22 Q.   AND AGAIN, CAN YOU UPON HAD US EXPLAIN AT A HIGH LEVEL HOW

03:32PM 23 THAT DOES THAT, HOW DOES SYSDB HELP WITH MODULARITY AND SELF

03:32PM 24 HEALING?

03:32PM 25 A.   SO SYSDB KEEPS TRACK OF ALL THE MODULES WHICH ARE RUNNING,

03:32PM 1   HOW THEY ARE BEHAVING, WHAT THEIR CONFIGURATION WAS OR WHAT

03:32PM 2   THEY ARE SUPPOSED TO DO.

03:32PM 3   AND WHEN A MODULE HAS SOME PROBLEM, IT CAN RESTART AND COME

03:32PM 4   BACK TO SYSDB TO SAY, CAN YOU TELL ME WHAT I WAS DOING, WHAT I

03:32PM 5   WAS SUPPOSED TO DO AND SYSDB CAN TELL IT BACK.

03:32PM 6   Q.   AND WAS SYSDB INTRODUCED INTO ANY OPERATING SYSTEM AT

03:32PM 7   CISCO?

03:32PM 8   A.   SYSDB SHIPS WITH IOS XR.

03:32PM 9   Q.   AND THAT'S THE SAME OPERATING SYSTEM THAT WE HAVE BEEN

03:32PM 10   DISCUSSING FOR SERVICE PROVIDERS, CORRECT?

03:32PM 11   A.   YES.

03:32PM 12   Q.   AND SIR, IF YOU CAN LOOK IN EXHIBIT, IN YOUR BINDER TO 503.

03:33PM 13   (OFF-THE-RECORD DISCUSSION.)

03:33PM 14   A.   YES, I HAVE EXHIBIT 503.

03:33PM 15   Q.   OKAY. CAN YOU TELL US BRIEFLY WHAT THIS IS?

03:33PM 16   A.   THIS EXHIBIT BASICALLY IS THE SOFTWARE RELEASE FOR IOS XR.

03:33PM 17   MR. PAK: AND YOUR HONOR, AT THIS POINT I WOULD LIKE

03:33PM 18   TO ADMIT INTO EVIDENCE EXHIBIT 503.

03:33PM 19   MR. FERRALL: NO OBJECTION.

03:33PM 20   THE COURT: IT WILL BE ADMITTED.

03:33PM 21   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 503, HAVING BEEN

03:33PM 22   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

03:33PM 23   EVIDENCE.)

03:33PM 24   BY MR. PAK

03:33PM 25   Q.   SO THIS SAYS CISCO IOS XR, AND IT'S A SOFTWARE RELEASE

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:34PM 1   VERSION 3.0, CORRECT?

03:34PM 2   A.   YES.

03:34PM 3   Q.   AND GENERALLY, ROUGHLY WHAT TIMEFRAME ARE WE TALKING ABOUT

03:34PM 4   IN TERMS OF THE RELEASE 3.0 OF IOS XR?

03:34PM 5   A.   PROBABLY 2006, 2007 TIMEFRAME.

03:34PM 6   Q.   AND IF WE LOOK IN THE SECOND PARAGRAPH, LET'S BRING THAT

03:34PM 7   UP, IT STATES CISCO IOS XR SOFTWARE, A UNIQUE SELF HEALING

03:34PM 8   DISTRIBUTED OPERATING SYSTEM DESIGNED FOR ALWAYS ON OPERATION

03:34PM 9   WHILE SCALING SYSTEM CAPACITY UP TO 92 TBPS; CORRECT?

03:34PM 10 A.   YES.

03:34PM 11 Q.   AND CAN YOU, AGAIN, REMIND US, WHAT MADE IOS XR SOFTWARE

03:34PM 12 UNIQUE AS AN OPERATING SYSTEM AT THIS TIME?

03:34PM 13 A.   SO WE TALKED ABOUT A SELF HEALING CAPABILITY. WE TALKED

03:34PM 14 ABOUT THE MODULARITY. AND THE OTHER THING ABOUT IOS XR WAS

03:35PM 15 THAT WE WANTED TO REALLY HAVE A HUGE AMOUNT OF SCALEABILITY, IF

03:35PM 16 YOU LOOK AT 92 TERABITS PER SECOND, THAT'S LIKE TAKING THE

03:35PM 17 ENTIRE LIBRARY OF CONGRESS AND TRANSMITTING IT FROM ONE PLACE

03:35PM 18 TO OTHER IN A COUPLE OF MINUTES. OKAY. SO THOSE WERE THE

03:35PM 19 THINGS WHICH WERE THE INNOVATIONS OF IOS XR.

03:35PM 20 Q.   AND HOW WAS IOS XR RECEIVED BY CUSTOMERS OF CISCO?

03:35PM 21 A.   ACTUALLY, CUSTOMERS LOVE IT. WHEN I TALK TO CISCO

03:35PM 22 CUSTOMERS, A LOT OF OUR CUSTOMERS ASK ME IF THEY CAN GET IOS XR

03:35PM 23 ON SOME OF THE PLATFORMS WHICH DON'T RUN IOS XR.

03:35PM 24 Q.   I THINK SOME OF YOUR FRIENDS WHO WORK ON NX-OS MIGHT BE

03:35PM 25 DISAPPOINTED TO HEAR THAT. SO CAN YOU TELL US ABOUT SOME OF

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:35PM 1   THE PRODUCTS, SPECIFIC ROUTERS AND SWITCHES THAT RUN THE IOS XR

03:35PM 2   OPERATING SYSTEM?

03:35PM 3   A.   SO MOST OF THE PRODUCTS WHICH SERVICE PROVIDERS LIKE AT&T,

03:36PM 4   COMCAST USE, THEY RUN IOS XR. SOME OF THE PRODUCTS ARE CSR,

03:36PM 5   ASR 9K, THOSE ARE SOME OF THE OTHER PRODUCTS.

03:36PM 6   Q.   CAN YOU TELL US A LITTLE BIT ABOUT THE CSR-1 PRODUCT?

03:36PM 7   A.   CSR-1 PRODUCT WAS ONE OF OUR FIRST SERVICE PROVIDER ROUTER

03:36PM 8   WHICH RAN IOS XR.

03:36PM 9   Q.   AND WHAT WAS INTERESTING ABOUT THAT PRODUCT?

03:36PM 10   A.   THE CAPABILITIES YOU JUST DEFINED HERE AND HIGHLIGHTED

03:36PM 11   HERE, THEY ARE COMING UP IN CSR-1.

03:36PM 12   Q.   DID ANY PATENTS RESULT FOR CISCO FROM YOUR WORK ON AND YOUR

03:36PM 13   TEAM'S WORK ON IOS XR AND SYSDB?

03:36PM 14   A.   CISCO RECEIVED A LOT OF PATENTS ON IOS XR. I RECEIVED FOUR

03:36PM 15   PATENTS ON THE WORK I DID FOR SYSDB.

03:36PM 16   Q.   AND ROUGHLY WHAT TIMEFRAME DID YOU FILE FOR THOSE PATENTS

03:37PM 17   RELATED TO SYSDB TECHNOLOGY?

03:37PM 18   A.   THEY WERE FILED IN EARLY 2000, SO 2000, 2001, THAT

03:37PM 19   TIMEFRAME.

03:37PM 20   Q.   LET'S TAKE A LOOK AT ANOTHER DOCUMENT. THIS IS

03:37PM 21   EXHIBIT 504. AND THIS TIME WE ARE GOING TO SHIFT GEARS AND

03:37PM 22   TALK ABOUT THE NX-OS OPERATING SYSTEM. SO THIS IS EXHIBIT 504.

03:37PM 23   AND DO YOU RECOGNIZE THIS DOCUMENT?

03:37PM 24   A.   YES.

03:37PM 25   Q.   AND WHAT IS THIS DOCUMENT?

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:37PM 1   A.   THIS DOCUMENT BASICALLY IS DEFINING SOME OF THE PROPERTIES

03:37PM 2   OF NX-OS SOFTWARE.

03:37PM 3   Q.   OKAY.

03:37PM 4   MR. PAK: AT THIS TIME, YOUR HONOR, I WOULD LIKE TO

03:37PM 5   ADMIT EXHIBIT 504 INTO EVIDENCE.

03:37PM 6   MR. FERRALL: NO OBJECTION.

03:37PM 7   THE COURT: IT WILL BE ADMITTED.

03:37PM 8   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 504, HAVING BEEN

03:37PM 9   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

03:37PM 10   EVIDENCE.)

03:37PM 11   BY MR. PAK:

03:37PM 12   Q.   AND AT THE VERY TOP, SO THIS IS CISCO NX-OS SOFTWARE, IT'S

03:37PM 13   A WHITE PAPER, CORRECT?

03:37PM 14   A.   YES.

03:37PM 15   Q.   SO THIS IS THE KIND OF DOCUMENT THAT WOULD BE USED TO

03:37PM 16   DESCRIBE THE PRODUCT?

03:37PM 17   A.   YES.

03:37PM 18   Q.   OKAY. SO IF WE GO DOWN, CAN YOU WALK US THROUGH SOME OF

03:38PM 19   THE FEATURES OF THE NEXT GENERATION OR NX-OS OPERATING SYSTEM?

03:38PM 20   A.   IF YOU LOOK AT WHAT IT IS DESCRIBING, IS THAT NX-OS

03:38PM 21   SOFTWARE STARTS WITH MODULARITY BECAUSE IT STARTED WITH THE

03:38PM 22   NX-OS IS VERY MODULAR. BECAUSE OF THE MODULARITY, IT'S ALSO

03:38PM 23   VERY RESILIENT. AND SOME OF THE FEATURES WHICH ARE NOW VERY

03:38PM 24   IMPORTANT IS THINGS LIKE SECURITY, EASY TO USE.

03:38PM 25   Q.   AND DID YOU HAVE A CHANCE TO WORK ON NX-OS AS WELL?

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REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:38PM 1   A.   I WORKED ON NX-OS ON PRODUCT NEXUS 7000.

03:38PM 2   Q.   SO NEXUS 7000 THAT'S ONE OF THE PRODUCTS WE HAVE BEEN

03:38PM 3   HEARING ABOUT IN THIS CASE, CORRECT?

03:38PM 4   A.   YES.

03:38PM 5   Q.   SO WITH RESPECT TO THE NEXUS OS SOFTWARE, WHAT IS THE

03:38PM 6   ORIGIN OF THAT SOFTWARE, HOW DOES CISCO DEVELOP THE NX-OS

03:38PM 7   SOFTWARE?

03:38PM 8   A.   IT WAS DEVELOPED FROM SCRATCH AT CISCO.

03:38PM 9   Q.   AND DO YOU RECALL ROUGHLY WHEN WORK STARTED ON NX-OS?

03:39PM 10   A.   I DON'T REMEMBER.

03:39PM 11   Q.   AND IT WAS TARGETING THE DATA CENTER MARKET; IS THAT

03:39PM 12   CORRECT?

03:39PM 13   A.   THIS PRODUCT WAS TARGETED AT THE DATA CENTER MARKET.

03:39PM 14   Q.   WAS THIS A PREDECESSOR PRODUCT FOR THE DATA CENTER MARKET

03:39PM 15   IN TERMS OF OPERATING SYSTEM?

03:39PM 16   A.   YES, WE HAVE BEEN SHIPPING A PLATFORM CALLED MDS, WHICH WAS

03:39PM 17   IN THE DATA CENTER MARKET USING OPERATING SYSTEM CALLED SANOS.

03:39PM 18   Q.   AND IS THERE A RELATIONSHIP, IF ANY, BETWEEN SANOS AND

03:39PM 19   NX-OS?

03:39PM 20   A.   NX-OS SUPERSEDES SANOS.

03:39PM 21   Q.   AND SO IF YOU TURN TO PAGE 5, I BELIEVE YOU WERE ASKED

03:39PM 22   ABOUT THIS IN YOUR DEPOSITION, IF YOU LOOK AT ENHANCED

03:39PM 23   USABILITY AND FAMILIAR OPERATION?

03:39PM 24   A.   YES.

03:39PM 25   Q.   AND AT THE -- IT STATES CISCO IOS SOFTWARE IS ALREADY THE

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:39PM 1   RECOGNIZED LEADER IN INTERNET WORKING DEVICE OPERATING SYSTEMS

03:40PM 2   FOR DECADES CISCO IOS SOFTWARE HAS BEEN THE FOUNDATION FOR

03:40PM 3   ROUTING AND SWITCHING CONFIGURATION IN ALL ENVIRONMENTS. THE

03:40PM 4   CISCO IOS CLI HAS ESSENTIALLY BECOME THE STANDARD FOR

03:40PM 5   CONFIGURATION IN THE NETWORKING INDUSTRY?

03:40PM 6   A. YES.

03:40PM 7   Q. SO ON BEHALF OF CISCO, AND SOMEBODY WHO IS THE CHIEF

03:40PM 8   ARCHITECT, WHAT DOES CISCO MEAN WHEN YOU USE THE PHRASE, HAS

03:40PM 9   BECOME THE STANDARD IN DESCRIBING IOS CLI?

03:40PM 10   A. SO WHAT IT DESCRIBES IS THAT CISCO IOS CLI WAS THE BEST, TO

03:40PM 11   COMPETE AGAINST IT, TO SET THE BAR. ALSO, IT DEFINED A SET OF

03:40PM 12   PROPERTIES WHICH PEOPLE WERE ALWAYS EXPECTING A LOT OF.

03:40PM 13   Q. DID CISCO, WHEN IT WROTE THESE WORDS, "BECAME THE

03:40PM 14   STANDARD," WAS IT TELLING THE WORLD THAT ANYONE COULD COME AND

03:40PM 15   COPY THE CISCO CLI WITHOUT A LICENSE?

03:40PM 16   MR. FERRALL: OBJECTION. FOUNDATION.

03:40PM 17   THE COURT: SUSTAINED.

03:40PM 18   BY MR. PAK:

03:41PM 19   Q. HAVE YOU EVER, IN YOUR EXPERIENCE AT CISCO, HEARD ANYONE

03:41PM 20   SAY THAT IT WAS CISCO'S POLICY TO ALLOW COMPANIES TO COPY CISCO

03:41PM 21   CLI WITHOUT A LICENSE?

03:41PM 22   A. I HAVE NOT.

03:41PM 23   Q. DO YOU BELIEVE THAT CISCO CLI IS IMPORTANT TO CISCO'S

03:41PM 24   BUSINESS?

03:41PM 25   A. YES.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:41PM 1   Q.   LET'S TAKE A LOOK AT ANOTHER DOCUMENT THAT'S ALREADY BEEN

03:41PM 2   ADMITTED INTO EVIDENCE, YOUR HONOR, THIS IS EXHIBIT 5464. AND

03:41PM 3   AGAIN AS A COMPANY WITNESS I BELIEVE YOU WERE ASKED ABOUT THIS

03:41PM 4   DOCUMENT DURING YOUR DEPOSITION?

03:41PM 5   A.   YES. THIS DOCUMENT WAS SHOWN TO ME AT MY DEPOSITION.

03:41PM 6   Q.   AND THIS IS, IF WE COULD PULL UP THE QUOTE AT THE TOP,

03:41PM 7   THERE'S A QUOTE WITH IOS CISCO WAS CREATING ONE FROM MANY AND

03:41PM 8   THAT'S SOMETHING THAT WE STILL DO TODAY.

03:42PM 9   THAT'S JOEL BION, SENIOR VICE PRESIDENT OF RESEARCH AND

03:42PM 10   ADVANCED DEVELOPMENT FOR CISCO AT THE TIME, CORRECT?

03:42PM 11   A.   YES.

03:42PM 12   Q.   YOU KNOW MR. BION, CORRECT?

03:42PM 13   A.   YES.

03:42PM 14   Q.   OKAY. AND YOU'VE WORKED WITH HIM A NUMBER OF YEARS AT

03:42PM 15   CISCO?

03:42PM 16   A.   YES.

03:42PM 17   Q.   OKAY. JUST TO BE CLEAR, IS THIS THE FINAL PRESS RELEASE

03:42PM 18   THAT WENT OUT TO THE PUBLIC OR WAS IT A DRAFT VERSION?

03:42PM 19   A.   THIS WAS THE DRAFT VERSION WHICH WAS CIRCULATED INTERNALLY

03:42PM 20   FOR PEOPLE TO COMMENT ON.

03:42PM 21   Q.   AS FAR AS YOU KNOW WAS THIS DOCUMENT EVER SHARED WITH THE

03:42PM 22   PUBLIC?

03:42PM 23   A.   THE FINAL PRESS RELEASE WAS SHARED WITH THE PUBLIC BUT NOT

03:42PM 24   THE DRAFT DOCUMENT.

03:42PM 25   Q.   OKAY. WE WILL GET TO THE FINAL PRESS RELEASE.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:42PM 1   SO LOOKING JUST AT THE DRAFT RELEASE, I THINK YOU WERE ALSO

03:42PM 2 ASKED ABOUT THIS AT YOUR DEPOSITION. IF YOU COULD GO TO

03:42PM 3 "TRANSFORMING AN INDUSTRY, THE DRAFT PRESS RELEASE STATED."

03:42PM 4   ONE OF IOS'S LEGACIES WAS ESTABLISHING AN INDUSTRY STANDARD

03:42PM 5 FOR HOW PEOPLE INTERFACE WITH ROUTERS AND SWITCHES KNOWN AS THE

03:43PM 6 COMMAND LANGUAGE INTERFACE OR CLI, CORRECT?

03:43PM 7 A.   YES.

03:43PM 8 Q.   AND AGAIN, ON BEHALF OF CISCO, CAN YOU EXPLAIN WHAT WAS

03:43PM 9 MEANT IN THIS LANGUAGE WHEN IT SAYS, KNOWN AS THE COMMAND

03:43PM 10 LANGUAGE INTERFACE CLI BECOMING OR ESTABLISHING INDUSTRY

03:43PM 11 STANDARD FOR HOW PEOPLE INTERFACE WITH ROUTERS AND SWITCHES?

03:43PM 12 A.   WHAT JOEL WAS SAYING, AGAIN, WAS THAT THE IOS CLI WAS THE

03:43PM 13 BEST OF BREED, SOMETHING TO COMPETE AGAINST.

03:43PM 14 Q.   AND AGAIN, IT SAYS HERE, "ANYONE WHO GOES TO CONFIGURE A

03:43PM 15 COMPETITOR'S PRODUCT FEELS VERY MUCH AT HOME," THAT'S WHAT

03:43PM 16 MR. BION SAID?

03:43PM 17 A.   YES.

03:43PM 18 Q.   AND AGAIN, WHAT'S YOUR POSITION ON BEHALF OF CISCO AS TO

03:43PM 19 WHAT WAS MEANT BY THAT?

03:43PM 20   MR. FERRALL: OBJECTION. FOUNDATION.

03:43PM 21   THE COURT: SUSTAINED.

03:43PM 22 BY MR. PAK:

03:43PM 23 Q.   TO YOUR KNOWLEDGE, HAS MR. BION EVER TOLD YOU THAT IT WAS

03:43PM 24 OKAY FOR OTHER COMPANIES TO COPY CISCO'S CLI?

03:43PM 25 A.   NO.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:44PM 1   Q.   LET'S TAKE, ACTUALLY, A LOOK AT THE FINAL PRESS RELEASE

03:44PM 2   THAT WENT OUT FROM THIS DRAFT, AND THIS IS EXHIBIT 494 IN YOUR

03:44PM 3   BINDER.

03:44PM 4   AND DO YOU RECOGNIZE THIS DOCUMENT? IT'S 494 IN YOUR

03:44PM 5   BINDER. WHAT IS THIS DOCUMENT?

03:44PM 6   A.   THIS IS A FINAL PRESS RELEASE WHICH WENT OUT.

03:44PM 7   Q.   OKAY. AND THE OCCASION FOR THE PRESS RELEASE, WAS THAT THE

03:44PM 8   25-YEAR CELEBRATION OF CISCO IOS SOFTWARE?

03:44PM 9   A.   YES.

03:44PM 10   Q.   AND SO LET'S TAKE --

03:44PM 11   MR. PAK: AND AT THIS POINT I WOULD LIKE TO ADMIT

03:44PM 12   EXHIBIT 494 INTO EVIDENCE.

03:44PM 13   MR. FERRALL: NO OBJECTION.

03:44PM 14   THE COURT: IT WILL BE ADMITTED.

03:44PM 15   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 494, HAVING BEEN

03:44PM 16   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

03:44PM 17   EVIDENCE.)

03:44PM 18   BY MR. PAK:

03:44PM 19   Q.   SO NOW LET'S LOOK AT THE SAME PARAGRAPH THAT WE WERE

03:44PM 20   LOOKING AT BEFORE BUT THIS IS THE VERSION THAT ACTUALLY WENT

03:45PM 21   OUT TO THE PUBLIC ABOUT THE 25TH ANNIVERSARY OF CISCO IOS.

03:45PM 22   SO IF WE GO BACK TO THE OTHER PAGE, TRANSFORMING AN

03:45PM 23   INDUSTRY. AND CAN YOU READ INTO THE RECORD WHAT WAS ACTUALLY

03:45PM 24   SAID IN THE PRESS RELEASE THAT WAS SENT OUT TO THE PUBLIC.

03:45PM 25   A.   IT SAYS, "IF THE SUCCESS OF A PRODUCT IS MEASURED BY HOW

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:45PM 1   MUCH IT IS IMITATED, THEN IOS HAS CLEARLY SHOWN ITS STRENGTH.

03:45PM 2   IT SETS THE STANDARD BY WHICH COMPETITIVE PRODUCTS ARE DESIGNED

03:45PM 3   AND EVEN CONFIGURED."

03:45PM 4   Q.   AND AGAIN, DO YOU -- HOW DO YOU SEE THE DIFFERENCE, IF ANY,

03:45PM 5   BETWEEN THIS STATEMENT AND WHAT WE SAW BEFORE ABOUT THE

03:45PM 6   INDUSTRY STANDARD LANGUAGE?

03:45PM 7   A.   BOTH THESE STATEMENTS ARE SAME, THEY ARE BASICALLY SAYING

03:45PM 8   IOS IS THE BEST OF THE BREED.

03:45PM 9   Q.   AND AGAIN, IT SAYS IOS, MR. BION THIS TIME SAYS IOS

03:45PM 10   ESTABLISHED THE CORE ELEMENTS OF THE LANGUAGE OF ROUTER

03:45PM 11   CONFIGURATION; DO YOU SEE THAT?

03:46PM 12   A.   YES.

03:46PM 13   Q.   WHAT IS YOUR UNDERSTANDING OF THAT STATEMENT?

03:46PM 14   A.   I BELIEVE WHAT HE'S TALKING ABOUT IS SOME OF THE BEST

03:46PM 15   FEATURES WHICH ARE CLI ARE TEXT-BASED INTERFACE. AND IOS HAVE

03:46PM 16   ESTABLISHED THOSE FEATURES.

03:46PM 17   Q.   WHAT ARE SOME OF THESE FEATURES YOU ARE PERSONALLY FAMILIAR

03:46PM 18   WITH?

03:46PM 19   A.   SOME OF THOSE FEATURES, LIKE IF YOU TURN IN THE MIDDLE OF A

03:46PM 20   COMMAND IT WILL SAY, COMMAND COMPLETION, OR IT WILL TELL YOU

03:46PM 21   WHAT POSSIBLE COMMANDS CAN BE ISSUED.

03:46PM 22   Q.   NOW WITH -- LET'S SWITCH TO OUR NEXT TOPIC WHICH IS TALKING

03:46PM 23   ABOUT PRODUCTS CISCO MAKES. AND THIS TIME, I BELIEVE WE HAVE A

03:46PM 24   DEMONSTRATIVE FROM MR. KATHAIL. AND IF WE TURN TO SLIDE 1, AT

03:46PM 25   A VERY HIGH LEVEL, CAN YOU EXPLAIN TO THE JURY WHAT TYPES OF

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:46PM   1   PRODUCTS CISCO MAKES?

03:46PM   2   A.   SO THIS SLIDE IS SHOWING CISCO MAKES LARGE NUMBER OF

03:46PM   3   PRODUCTS.

03:46PM   4   MR. FERRALL: COUNSEL -- EXCUSE ME, I'M NOT SURE

03:47PM   5   WHETHER THE DEMONSTRATIVE IS DISCLOSED.   I DIDN'T HAVE THEM.

03:47PM   6   MR. PAK: I BELIEVE THEY WERE DISCLOSED -- WE DON'T

03:47PM   7   HAVE TO USE IT IF YOU HAVEN'T --

03:47PM   8   MR. FERRALL: I DON'T THINK THEY WERE DISCLOSED LAST

03:47PM   9   NIGHT.

03:47PM   10   MR. PAK: YOUR HONOR, WE DON'T NEED THE

03:47PM   11   DEMONSTRATIVE.   LET ME WALK MR. KATHAIL THROUGH IT.

03:47PM   12   Q.   SO MR. KATHAIL, CAN YOU DESCRIBE AT A HIGH LEVEL SOME OF

03:47PM   13   THE TYPES OF DIFFERENT PRODUCTS CISCO MAKES?

03:47PM   14   A.   SO WE HAVE BEEN TALKING ABOUT ROUTERS AND SWITCHES.   CISCO

03:47PM   15   MAKES ALL THESE SHAPES AND SIZES OF ROUTERS AND SWITCHES.

03:47PM   16   IF YOU LOOK AT YOUR HOME, YOU WILL HAVE A SMALL INTERNET

03:47PM   17   ROUTER WHICH CONNECTS TO YOUR HOME.   WE MAKE VERY LARGE ROUTER

03:47PM   18   WHICH BASICALLY ALLOWS SERVICE PROVIDER TO CONNECT LARGE NUMBER

03:47PM   19   OF PEOPLE TO THE INTERNET OR TRANSPORTING THE DATA FROM ONE

03:47PM   20   CITY TO ANOTHER.   SO WE CREATE THOSE KIND OF PRODUCTS.

03:47PM   21   WE HAVE VOICE PRODUCTS LIKE VOICEOVER IP PHONES.   WE HAVE

03:47PM   22   TELECONFERENCING PRODUCTS AND WE HAVE SECURITY PRODUCTS.

03:47PM   23   Q.   DO YOU ALSO HAVE CABLE PRODUCTS THAT YOU SELL?

03:47PM   24   A.   YES, WE DO HAVE CABLE PRODUCTS.

03:48PM   25   Q.   AND DO MANY OF THESE PRODUCTS, EITHER WORK WITH OR RUN THE

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:48PM 1   INTERNET WORKING OPERATING SYSTEM OR IOS?

03:48PM 2   A.   THE -- SOME OF THESE PRODUCTS RUN EITHER IOS OR THE VERY

03:48PM 3   END OF IOS WHICH WE TALKED ABOUT EOS, IOS XR, NX-OS.

03:48PM 4   Q.   ONE OF THE TYPES OF PRODUCTS THAT CISCO DOES MAKE IS THE

03:48PM 5   GIGABIT ETHERNET SWITCHING PRODUCTS, CORRECT?

03:48PM 6   A.   YES, WE MAKE A FEW OF THEM.

03:48PM 7   Q.   AND I THINK YOU MENTIONED THE NEXUS 7000?

03:48PM 8   A.   YES.

03:48PM 9   Q.   WHAT IS THE INTENDED MARKET FOR THE NEXUS 7000 PRODUCT?

03:48PM 10   A.   THE INTENDED MARKET FOR NEXUS 7000 IS THE DATA CENTER

03:48PM 11   MARKET. THE DATA CENTER ARE THE PLACES WHERE WE HAVE THE

03:48PM 12   SERVERS WHICH RUN BASICALLY YOUR URL'S, SO WHEN YOU ACCESS A

03:48PM 13   URL, YOU ARE BASICALLY ACCESSING THOSE COMPUTERS.

03:48PM 14   Q.   OKAY. SO WHEN YOU ARE ACCESSING THE URL ON YOUR HOME PAGE

03:48PM 15   AND YOU TYPE WWW.NFL.COM, CHANCES ARE IT'S GOING THROUGH A

03:49PM 16   PRODUCT LIKE THE NEXUS 7000?

03:49PM 17   A.   VERY GOOD CHANCES ARE IT IS GOING THROUGH NEXUS 7000 AND

03:49PM 18   ACCESSING A COMPUTER WHICH BASICALLY HAVE ALL THE DATA STORED

03:49PM 19   FOR NFL OR WHATEVER.

03:49PM 20   Q.   OKAY. AND WHAT TYPE OF OPERATING SYSTEM DOES THE NEXUS

03:49PM 21   7000 RUN?

03:49PM 22   A.   IT RUNS NX-OS.

03:49PM 23   Q.   AND AT A HIGH LEVEL CAN YOU DESCRIBE FOR THE JURY THE TYPES

03:49PM 24   OF COMMANDS OR FUNCTIONALITIES THAT WOULD BE FOUND IN A GIGABIT

03:49PM 25   ETHERNET SWITCHING PRODUCT?

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:49PM 1   A.   SO IF WE CAN TAKE ONE EXAMPLE, SINCE NEXUS 7000 IS

03:49PM 2   CONNECTING VARIOUS COMPUTERS, IT NEEDS TO FIGURE OUT WHAT IS

03:49PM 3   THE BEST PATH BETWEEN THOSE TWO COMPUTERS, AND IF THOSE TWO

03:49PM 4   COMPUTERS HAPPEN TO BE IN TWO DIFFERENT ROOMS, HOW TO GO FROM

03:49PM 5   SEND THE PACKET FROM ONE ROOM TO THE OTHER ROOM.

03:49PM 6   SO WE USE A PRODUCT CALLED BGP WHICH IS A BORDER GATEWAY

03:49PM 7   PROTOCOL, AND THAT'S ONE OF THE FEATURES.

03:49PM 8   Q.   AND DO YOU HAVE AN UNDERSTANDING OF WHO CREATED THE BGP

03:49PM 9   PROTOCOL?

03:49PM 10   A.   CISCO WAS -- SO BGP IS AN STANDARD BUT CISCO WAS THE

03:50PM 11   INITIAL, CISCO CREATED THE INITIAL VERSION OF THE BGP PRODUCT.

03:50PM 12   Q.   AND DO YOU KNOW ANY SPECIFIC CISCO ENGINEERS THAT WERE

03:50PM 13   INVOLVED IN THE CREATION OF THE INITIAL PROTOCOL THAT BECAME

03:50PM 14   BGP?

03:50PM 15   MR. FERRALL: OBJECTION. FOUNDATION.

03:50PM 16   MR. PAK: DO YOU HAVE PERSONAL KNOWLEDGE --

03:50PM 17   THE COURT: SUSTAINED.

03:50PM 18   THE WITNESS: YES. KIRK LOUGHEED WAS ONE OF THE --

03:50PM 19   BY MR. PAK:

03:50PM 20   Q.   THAT WAS KIRK LOUGHEED, CORRECT?

03:50PM 21   A.   YES.

03:50PM 22   Q.   NOW THIS IS GOING TO BE A LITTLE BIT DIFFICULT BUT WE ARE

03:50PM 23   GOING TO WALK THROUGH A FEW OF THE MANUALS THAT PERTAIN TO THE

03:50PM 24   NEXUS 7000.

03:50PM 25   SO IF YOU LOOK AT EXHIBIT 5078

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:50PM 1   A.   YES.

03:50PM 2   Q.   WHAT IS EXHIBIT 5078?

03:50PM 3   A.   IT IS THE COMMAND REFERENCE MANUAL FOR NEXUS OS RUNNING ON

03:51PM 4   NEXUS 7000.

03:51PM 5   Q.   AND IN PARTICULAR IT SAYS, IT'S THE SYSTEM MANAGEMENT

03:51PM 6   COMMAND REFERENCE, CORRECT?

03:51PM 7   A.   YES, SO IT BASICALLY COVERS A SUBSET OF COMMANDS WHICH DO

03:51PM 8   THE MANAGEMENT OF THE SYSTEM.

03:51PM 9   Q.   SO IS IT REGULAR POLICY OF CISCO TO PUBLISH SOME OF THESE

03:51PM 10   MANUALS THAT TALK ABOUT THE COMMANDS PERTAINING TO SPECIFIC

03:51PM 11   PRODUCTS?

03:51PM 12   A.   YES.

03:51PM 13   Q.   AND IF YOU TURN TO EXHIBIT 2908, 2910, 2913, 2919, 2924,

03:51PM 14   2927, 2930, 2931, 2932, AND 2919. I BELIEVE THESE ARE ALL THE

03:51PM 15   OTHER MANUALS THAT PERTAIN, BUT COULD YOU VERIFY THAT FOR ME?

03:51PM 16   A.   YES. THEY ARE ALL THE MANUALS FOR DIFFERENT FUNCTIONALITY

03:51PM 17   WHICH RUNS ON NEXUS 7000 AS PART OF NX-OS.

03:52PM 18   Q.   SO DEPENDING ON WHAT PORTION OF THE FUNCTIONALITY THAT YOU

03:52PM 19   WANT TO LOOK UP IN CISCO NEXUS 7000 PRODUCT, YOU WOULD GRAB THE

03:52PM 20   RIGHT MANUAL FOR THAT, CORRECT?

03:52PM 21   A.   TYPICALLY, YOU WOULD GRAB THE RIGHT MANUAL FOR THE RIGHT

03:52PM 22   PLATFORM.

03:52PM 23   MR. PAK: AND AT THIS POINT, YOUR HONOR, I WOULD LIKE

03:52PM 24   TO -- I DON'T THINK THIS IS OBJECTED TO, BUT I WOULD LIKE TO

03:52PM 25   ADMIT INTO EVIDENCE THESE MANUALS THAT CORRESPOND TO THE NEXUS

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:52PM 1   7000 SERIES OF PRODUCTS. THAT'S 2908, 2910, 2913, 2919, 2924,

03:52PM 2   2927, 2930, 2931, 2932, AND 2919.

03:52PM 3   THE COURT: ANY OBJECTION?

03:52PM 4   MR. FERRALL: SORRY. I JUST GOT CONFUSED BECAUSE I

03:52PM 5   THINK HE SAID 2919 TWICE. BUT I DON'T HAVE AN OBJECTION.

03:53PM 6   THE COURT: HE DID SAY IT TWICE.

03:53PM 7   MR. PAK: SORRY, YOUR HONOR.

03:53PM 8   LET ME MAKE SURE I HAVE THE RECORD STRAIGHT. 2908, 2910,

03:53PM 9   2913, 2924, 2927, 2930, 2931, 2932 AND THEN 2919.

03:53PM 10   THE COURT: OKAY.

03:53PM 11   MR. FERRALL: NO OBJECTION.

03:53PM 12   THE COURT: NO OBJECTION. ALL RIGHT THEY WILL ALL BE

03:53PM 13   ADMITTED.

03:53PM 14   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS, 2908, 2910,

03:53PM 15   2913, 2924, 2927, 2930, 2931, 2932 AND 2919, HAVING BEEN

03:53PM 16   PREVIOUSLY MARKED FOR IDENTIFICATION, WERE ADMITTED INTO

03:53PM 17   EVIDENCE.)

03:53PM 18   THE COURT: YOU ALSO MENTION 5078, YOU HAD NOT MOVED

03:53PM 19   THAT INTO EVIDENCE.

03:53PM 20   MR. PAK: YES, THANK YOU, YOUR HONOR, VERY MUCH.

03:53PM 21   I WOULD LIKE TO MOVE 5078 INTO EVIDENCE AS WELL.

03:53PM 22   THE COURT: ANY OBJECTION?

03:53PM 23   MR. FERRALL: NO OBJECTION.

03:53PM 24   THE COURT: THAT WILL BE ADMITTED.

03:53PM 25

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:53PM 1   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 5078, HAVING BEEN

03:53PM 2   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

03:53PM 3   EVIDENCE.)

03:53PM 4   BY MR. PAK:

03:53PM 5   Q.   IN PREPARING FOR YOUR TESTIMONY HERE TODAY, HAVE YOU HAD A

03:53PM 6   CHANCE TO REVIEW THESE PARTICULAR MANUALS THAT CORRESPOND TO

03:53PM 7   THE NEXUS 7000?

03:53PM 8   A.   YES, I LOOKED THROUGH THOSE MANUALS AND I REVIEWED THE

03:53PM 9   TABLE OF CONTENTS FOR THOSE MANUALS.

03:53PM 10   Q.   SO SITTING HERE TODAY, DO YOU HAVE A SENSE OF HOW MANY

03:53PM 11   TOTAL NUMBER OF COMMANDS ARE DESCRIBED IN THESE MANUALS?

03:54PM 12   MR. FERRALL: OBJECTION, YOUR HONOR.

03:54PM 13   THIS IS PRECLUSION. PERHAPS WE NEED TO DISCUSS AT SIDEBAR.

03:54PM 14   THE COURT: WELL, WE CAN DISCUSS IT AT SIDEBAR, SURE.

03:54PM 15   (SIDEBAR DISCUSSION ON THE RECORD.)

03:54PM 16   MR. FERRALL: YOUR HONOR, YOU WILL REMEMBER FOR ONE

03:54PM 17   OF THE DISSECTION ARGUMENTS, WE PRESENTED AN INTERROGATORY

03:54PM 18   WHICH ASKS FOR THE TOTAL NUMBER OF COMMANDS FOR EACH ASSERTED

03:54PM 19   WORK. AND CISCO'S RESPONSE WAS NOT TO GIVE A NUMBER, BUT TO

03:54PM 20   REFER US TO A MASSIVE AMOUNT OF DOCUMENTS.

03:54PM 21   THE COURT: AND YOU DIDN'T COUNT THEM YOURSELF.

03:54PM 22   MR. FERRALL: I DID NOT COUNT THEM MYSELF, NOR DID I

03:54PM 23   HAVE --

03:54PM 24   THE COURT: SO YOU WERE TRYING TO OBTAIN THE NUMBER

03:54PM 25   OF COMMANDS, BECAUSE THIS IS THE NUMBER OF COMMANDS SET FORTH

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:54PM   1   IN THE MANUALS NOT THE ASSERTED ELEMENTS THAT WERE COPIED.

03:55PM   2   MR. FERRALL: RIGHT. BUT THAT'S WHAT WE WERE LOOKING

03:55PM   3   FOR. FOR EACH COPYRIGHT REGISTERED WORK THAT CISCO ALLEGES

03:55PM   4   ARISTA UNLAWFULLY COPIED IDENTIFY THE TOTAL NUMBER OF COMMANDS

03:55PM   5   ET CETERA IN THE WORK.

03:55PM   6   THE COURT: OH, TOTAL.

03:55PM   7   MR. FERRALL: ALL THEY DID WAS GIVE US A LIST OF

03:55PM   8   SOURCE CODE AND THIS IS A REFERENCE TO EVERY MANUAL THAT WAS

03:55PM   9   FILED WITH THAT REGISTRATION.

03:55PM 10   MR. PAK: YOUR HONOR, THIS IS A DIFFERENT QUESTION

03:55PM 11   ALL TOGETHER.

03:55PM 12   THIS IS ABOUT THE NUMBER OF COMMANDS IN EACH OF THE

03:55PM 13   REGISTERED VERSIONS OF THE OPERATING SYSTEM.

03:55PM 14   WHAT WE ARE TRYING TO ESTABLISH IS THAT WHEN YOU HAVE A

03:55PM 15   PARTICULAR PRODUCT THAT RUNS ONE OF THESE OPERATING SYSTEM,

03:55PM 16   LIKE THE GIGABIT ETHERNET SWITCHING PRODUCT, THE RELEVANCE

03:55PM 17   COMMANDS THAT WILL BE USED IN SUCH A PRODUCT IS A SUBSET OF

03:55PM 18   THOSE COMMANDS AND HE HAS SPECIFIC KNOWLEDGE OF THAT.

03:55PM 19   AND THAT'S IN RESPONSE TO THE FAIR USE ARGUMENTS THAT WE

03:55PM 20   WILL HEAR THAT IN TERMS OF WHAT WAS TAKEN, THEY ARE GOING TO

03:55PM 21   ARGUE THAT IT WAS A QUANTITATIVELY A SMALL NUMBER. WHAT WE

03:55PM 22   WOULD LIKE TO SHOW IS THAT QUALITATIVELY THEY TOOK THE COMMANDS

03:55PM 23   THAT CORRESPOND TO THE SPECIFIC PRODUCTS THEY SELL. AND THIS

03:56PM 24   IS DIRECTLY PERTAINING TO THAT.

03:56PM 25   THE COURT: OKAY. SO THE WORK AS A WHOLE IS NOT

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REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:56PM   1   DEFINED AS PRODUCT, WE ARE NOT DEALING WITH THAT. AND SO WE

03:56PM   2   ARE DEALING WITH IN FAIR USE, WE ARE GOING TO BE COMPARING

03:56PM   3   QUALITATIVELY TO THE DEFENDANT'S WORK.

03:56PM   4   MR. FERRALL: ACTUALLY, THAT'S LEGALLY INCORRECT.

03:56PM   5   THE COMPARISON FOR FAIR USE IS THE PERCENTAGE OF THE

03:56PM   6   PLAINTIFF'S WORK THAT WAS USED, NOT THE PERCENTAGE OF THE

03:56PM   7   DEFENDANT'S WORK.

03:56PM   8   THE COURT: NO, NO, AND I SAID IT WRONG. BUT YOU ARE

03:56PM   9   RIGHT, THE PERCENTAGE OF THE PLAINTIFF WORK THAT WAS FOUND IN

03:56PM   10   THE DEFENDANT'S PRODUCT.

03:56PM   11   MR. FERRALL: RIGHT, RIGHT.

03:56PM   12   THE COURT: YES, I MISSPOKE, BUT I DID UNDERSTAND.

03:56PM   13   SORRY.

03:56PM   14   MR. FERRALL: AND SO WE ASKED FOR THIS, FOR JUST THIS

03:56PM   15   REASON TO UNDERSTAND WHAT IS THE TOTAL NUMBER OF COMMAND IN THE

03:56PM   16   WORK.

03:56PM   17   AND YOUR HONOR, I THINK WAS CLEAR AT THE DISSECTION

03:56PM   18   HEARING, THAT WE WEREN'T GOING TO HAVE A TRIAL BASED UPON SOME

03:56PM   19   PART OF THE WORK THAT'S CREATED HERE AT TRIAL WITHOUT ANY

03:56PM   20   EXPERT TESTIMONY.

03:56PM   21   I WOULD ALSO SAY THAT WE ASKED MR. KATHAIL IN DEPOSITION

03:56PM   22   HOW MANY COMMANDS RELATE TO GIGABIT ETHERNET SWITCHING AND HE

03:57PM   23   COULD AREN'T ANSWER THAT QUESTION EITHER.

03:57PM   24   THE COURT: HE IS LIMITED BY HIS DEPOSITION,

03:57PM   25   CERTAINLY.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:57PM 1   MR. PAK: YOUR HONOR, THE QUESTION IS SPECIFIC TO

03:57PM 2   THESE PARTICULAR PRODUCTS THAT'S THE NEXUS 7000. WE KNOW THAT

03:57PM 3   THAT HAD --

03:57PM 4   THE COURT: I'M TRYING TO REMEMBER IF YOU REFUSE TO

03:57PM 5   ANSWER THE INTERROGATORY.

03:57PM 6   MR. PAK: THIS IS A TOTAL DIFFERENT ISSUE WHICH IS

03:57PM 7   HOW MANY TOTAL COMMANDS ARE THERE IN THE OVER ALL COPYRIGHTED

03:57PM 8   WORK --

03:57PM 9   THE COURT: IN THIS PARTICULAR -- AND THESE ARE NOW

03:57PM 10 MANUALS FOR DIVIDED BY PRODUCT.

03:57PM 11   MR. PAK: THAT'S RIGHT.

03:57PM 12   SO THIS ONE IS -- THIS IS NOT THIS WORK AT ALL. WE ARE NOT

03:57PM 13 TYING IT TO THESE WORKS.

03:57PM 14   THE COURT: OKAY. YOU ARE DEALING WITH PRODUCTS AND

03:57PM 15 THIS QUESTION DEALT WITH WORKS. LET ME SEE THE QUESTION.

03:57PM 16   MR. FERRALL: YOUR HONOR, THE PRODUCT IS IRRELEVANT.

03:57PM 17 ALL THAT MATTERS IS THE WORK. AND THIS IS THE WORK, HE'S

03:57PM 18 SUBMITTING MANUALS OF NEXUS.

03:57PM 19   THE COURT: I AM CONCERNED THAT YOU HAVE ASSERTED

03:57PM 20 COPYING OF MANUALS WHICH IS DIFFERENT THAN COPYING FROM THE

03:58PM 21 OPERATING SYSTEM.

03:58PM 22   AND SO -- AND THEY ARE WHOLLY DIFFERENT. AND SO HE'S

03:58PM 23 GIVING TESTIMONY RELATED TO COPYING OF THE OPERATING SYSTEM.

03:58PM 24 BREAKING IT DOWN BY PRODUCT IS NOT SOMETHING THAT YOU'VE

03:58PM 25 ASSERTED. YOU DIDN'T ASSERT A WORK BASED ON A PRODUCT.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:58PM 1   MR. PAK: I AGREE, YOUR HONOR.

03:58PM 2   THIS IS A REASON WHY IT'S NOT A QUESTION OF INFRINGEMENT,

03:58PM 3 IT'S A QUESTION WITH RESPECT TO FAIR USE. ONE OF THE ARGUMENTS

03:58PM 4 THAT THEY WILL MAKE IS THAT, LET'S SAY WE HAVE 15,000 OR SO

03:58PM 5 COMMANDS IN THE OVERALL OPERATING SYSTEM VERSION FOR IOS. THEY

03:58PM 6 WILL ARGUE THAT WE ONLY TOOK 500 OR SO COMMANDS FROM THAT.

03:58PM 7   WHAT WE ARE GOING TO ARGUE IS THAT THEY TOOK -- SO IF YOU

03:58PM 8 LOOK AT THE ADVERTISED COMMANDS FOR THEIR GIGABIT ETHERNET

03:58PM 9 SWITCHES IS ABOUT 1500 OR 1300 COMMANDS, SO ONE OF THE

03:58PM 10 ARGUMENTS THAT OUR EXPERTS, AND WE WILL ARGUE, IS THAT THEY

03:58PM 11 TOOK WHAT THEY NEEDED TO SELL A PRODUCT.

03:58PM 12   ALL WE ARE TRYING TO ESTABLISH IS THAT THROUGH A FACT

03:59PM 13 WITNESS WHO HAS PERSONAL KNOWLEDGE OF THE NEXUS 7000 PRODUCT

03:59PM 14 THAT WHEN CISCO MAKES GIGABIT NETWORK SWITCHING PRODUCTS, THEY

03:59PM 15 DON'T USE ALL 15,000 COMMANDS, THEY ARE USING A SMALL SUBSET OF

03:59PM 16 THAT AS WELL AND THAT'S A FAIR --

03:59PM 17   THE COURT: I'M GOING TO ALLOW THIS PERTAINING TO

03:59PM 18 FAIR USE.

03:59PM 19   MR. FERRALL: CAN I JUST --

03:59PM 20   THE COURT: THE OBJECTION IS OVERRULED. YOU WILL

03:59PM 21 HAVE TO RESTATE THAT QUESTION.

03:59PM 22   MR. PAK: YES, OF COURSE.

03:59PM 23   THE WITNESS: AM I OKAY TO SPEAK? AM I OKAY?

03:59PM 24   MR. PAK: YES. OKAY. THANK YOU. AND I APOLOGIZE

03:59PM 25 VERY MUCH FOR THE INTERRUPTION THERE.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

03:59PM 1   Q.   SO GOING BACK, YOU LOOKED AT ALL THESE DIFFERENT COMMAND

03:59PM 2   REFERENCE MANUALS FOR THE NEXUS 7000. YOU WORKED ON

03:59PM 3   PERSONALLY, ROUGHLY, HOW MANY TOTAL COMMANDS ARE ADVERTISED IN

03:59PM 4   THESE MANUALS FOR THE NEXUS 7000 GIGABIT ETHERNET SWITCHING

03:59PM 5   PRODUCTS?

03:59PM 6   A.   LOOKING AT THE TABLE OF CONTENT OF ALL THESE MANUALS, THERE

04:00PM 7   ARE ABOUT 1500 COMMANDS IN NEXUS 7000.

04:00PM 8   Q.   NOW IF WE LOOK AT THE TOTAL OPERATING SYSTEM, THE IOS

04:00PM 9   CLASSIC, I THINK YOU TESTIFIED IN YOUR DEPOSITION THAT THERE

04:00PM 10   ARE LOTS OF COMMANDS, YOU DON'T KNOW THE SPECIFIC NUMBER; IS

04:00PM 11   THAT RIGHT?

04:00PM 12   A.   YES, THE NUMBER IS QUOTED LIKE BIG NUMBERS.

04:00PM 13   Q.   SO DID YOU EXPLAIN TO THE JURY WHY THERE ARE SO MANY

04:00PM 14   COMMANDS TOTAL NUMBER OF COMMANDS IN THE OVER ALL IOS OPERATING

04:00PM 15   SYSTEM MANUALS YET YOU ONLY HAVE 1500 COMMANDS OR SO ADVERTISED

04:00PM 16   FOR A GIGABIT ETHERNET SWITCHING PRODUCT?

04:00PM 17   A.   SO THERE ARE A FEW REASONS FOR IT.

04:00PM 18   ONE IS IOS IS A TOOL KIT OPERATING SYSTEM SO IT HAS ALL THE

04:00PM 19   FEATURES WHICH WE HAVE, SINCE CISCO WAS BASICALLY FORMULATED SO

04:00PM 20   WE NEVER RARELY DELETE FEATURES.

04:00PM 21   THE SECOND THING IS THAT NOT ALL THE FEATURES APPLY FOR

04:01PM 22   EVERY PRODUCT WHICH WE MADE. WE JUST SAW CISCO SELLS THE SMALL

04:01PM 23   ROUTERS, MEDIUM ROUTERS, BIG ROUTERS, SWITCHES, WE HAVE

04:01PM 24   ENTERPRISE PRODUCT, WE HAVE SERVICE PROVIDER PRODUCT.

04:01PM 25   SO WHEN WE BUILD A PRODUCT, WE FIGURE OUT WHAT THE MARKET

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:01PM 1   SEGMENT FOR THAT PRODUCT IS GOING TO BE, WHAT FEATURE THAT

04:01PM 2   MARKET SEGMENT WILL LEAD, WHAT IS THE SIZE OF THAT PRODUCT AND

04:01PM 3   WHAT FEATURES FOR THE SIZE OF PRODUCT WE WILL NEED, AND THEN WE

04:01PM 4   HAVE THE FEATURES INTO THE PRODUCT BASED ON THAT

04:01PM 5   Q.   AND DOES IT MAKE SENSE TO YOU FROM A TECHNICAL PERSPECTIVE

04:01PM 6   THINKING ABOUT GIGABIT ETHERNET SWITCHING FUNCTIONALITY THAT WE

04:01PM 7   ARE SEEING ABOUT 1500 COMMANDS FOR THE NEXUS 7000?

04:01PM 8   A.   IT'S IN THE BALLPARK.

04:01PM 9   Q.   OKAY. THANK YOU.

04:01PM 10   SO FOR EXAMPLE, IF THERE ARE COMMANDS IN IOS THAT DEAL WITH

04:01PM 11   VOICE GATEWAYS OR CABLE MODEMS OR WHATEVER PRODUCT THAT CISCO

04:01PM 12   MAY HAVE CREATED THAT HAS NOTHING TO DO WITH GIGABIT ETHERNET

04:01PM 13   SWITCHING FUNCTIONALITY, WOULD YOU EXPECT TO SEE THOSE COMMANDS

04:02PM 14   BE IMPLEMENTED AND ADVERTISED?

04:02PM 15   A.   NO, THOSE COMMANDS WILL NOT BE IMPLEMENTED IN A NEXUS 7000.

04:02PM 16   IF YOU LOOK AT HOME, YOU HAVE A CABLE MODEM WHICH IS

04:02PM 17   COMCAST CONNECTED TO YOUR HOME. AND THERE ARE COMMANDS TO SET

04:02PM 18   UP THAT CABLE MODEM. THERE IS COMMANDS TO CHECK WHETHER THAT

04:02PM 19   CABLE MODEM IS WORKING OR NOT. AND NONE OF THOSE COMMANDS WILL

04:02PM 20   BE IN NEXUS 7000.

04:02PM 21   Q.   MR. KATHAIL, AT THIS POINT I WOULD LIKE TO SWITCH GEARS AND

04:02PM 22   LOOK AT ANOTHER DOCUMENT IN YOUR BINDER. THIS IS EXHIBIT 4327.

04:02PM 23   A.   YES.

04:02PM 24   Q.   AND CAN YOU -- ARE YOU THE AUTHOR OF THIS DOCUMENT?

04:02PM 25   A.   YES.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:02PM 1   Q.   AND IT SAYS HERE PRADEEP KATHAIL, CISCO DISTINGUISHED

04:03PM 2   ENGINEER. THE DOCUMENT IS DATED MAY 21ST, 2007, CORRECT?

04:03PM 3   A.   YES.

04:03PM 4   Q.   AND CAN YOU BRIEFLY DESCRIBE FOR THE COURT WHAT TYPE OF

04:03PM 5   DOCUMENT THIS WAS AND THE PURPOSE OF THIS PRESENTATION?

04:03PM 6   A.   THIS PRESENTATION WAS CREATED TO WIDELY COMMUNICATE WHAT IS

04:03PM 7   THE CISCO SOFTWARE STRATEGIES GOING TO BE GOING FORWARD.

04:03PM 8   Q.   OKAY. AND IS THIS THE TYPE OF PRESENTATION THAT WAS BE

04:03PM 9   CREATED ON A REGULAR BASIS AS PART OF YOUR JOB RESPONSIBILITIES

04:03PM 10   TO COMMUNICATE PROJECTS THAT YOU WERE WORKING ON?

04:03PM 11   A.   YES.

04:03PM 12   Q.   OKAY. AND WHY DID YOU SPECIFICALLY CREATE THIS

04:03PM 13   PRESENTATION?

04:03PM 14   A.   WE WERE WORKING WITH CHIEF DEVELOPMENT OFFICER, SO WE WERE

04:03PM 15   WORKING WITH CHIEF DEVELOPMENT OFFICER TO CREATE A SOFTWARE

04:03PM 16   STRATEGY FOR CISCO, ROUTING AND SWITCHING PRODUCT, AND WE

04:03PM 17   WANTED TO COMMUNICATE IT WIDELY THAT WHERE WE WANTED TO END UP.

04:03PM 18   Q.   OKAY. AND THE CHIEF DEVELOPMENT OFFICER FOR CISCO IN 2007,

04:04PM 19   WHO WAS THAT INDIVIDUAL?

04:04PM 20   A.   THAT WAS CHARLIE GIANCARLO.

04:04PM 21   Q.   GIANCARLO?

04:04PM 22   A.   YES.

04:04PM 23   MR. PAK: YOUR HONOR, AT THIS POINT I WOULD LIKE TO

04:04PM 24   ADMIT INTO EVIDENCE EXHIBIT 4327.

04:04PM 25   THE COURT: ANY OBJECTION?

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:04PM 1   MR. FERRALL: NO OBJECTION, YOUR HONOR.

04:04PM 2   THE COURT: IT WILL BE ADMITTED.

04:04PM 3   (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 4327, HAVING BEEN

04:04PM 4 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

04:04PM 5 EVIDENCE.)

04:04PM 6 BY MR. PAK:

04:04PM 7 Q.   SO LET'S TAKE A LOOK AT THIS DOCUMENT.

04:04PM 8   SO AGAIN, NOW THE JURY CAN SEE THIS PRADEEP KATHAIL, THAT

04:04PM 9 WAS YOU, AND YOU WERE A CISCO DISTINGUISHED ENGINEER AT THE

04:04PM 10 TIME, CORRECT?

04:04PM 11 A.   YES.

04:04PM 12 Q.   AND TITLED INTERNAL NETWORKERS, WHAT DOES THAT MEAN?

04:04PM 13 A.   SO THAT'S BASICALLY IS A CONFERENCE WHICH CISCO USED TO PUT

04:04PM 14 TOGETHER. AT THAT TIME, WHERE ALL INTERNAL ENGINEERS USED TO

04:04PM 15 COME AND WE CAN COMMUNICATE OUR STRATEGY OF WHERE WE ARE GOING,

04:04PM 16 WHAT PRODUCTS WE WERE THINK.

04:04PM 17 Q.   IS SO THIS IS AN INTERNAL CONFERENCE OF CISCO ENGINEERS; IS

04:04PM 18 THAT CORRECT?

04:04PM 19 A.   YES.

04:04PM 20 Q.   DID YOU ACTUALLY GIVE THIS PRESENTATION ON MAY 21ST, 2007?

04:04PM 21 A.   YES.

04:04PM 22 Q.   SO LET'S TAKE A LOOK AT THE NEXT SLIDE, SLIDE 2.

04:05PM 23   AND IF YOU CAN BLOW THAT UP.

04:05PM 24   WHAT IS THIS SLIDE DESCRIBING?

04:05PM 25 A.   WHAT THIS SLIDE IS DESCRIBING IS TWO PARTS, ONE IS THAT THE

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:05PM 1   SOFTWARE STRATEGY WHICH WE CREATED AS PART OF THIS DISCUSSION

04:05PM 2   WAS FOR ANTI CISCO BECAUSE IT WAS MEANT FOR CDO.

04:05PM 3   THE SECOND THING WAS THAT THERE WERE TWO PIECES OF THE

04:05PM 4   STRATEGY, ONE WAS MAKING SURE THAT THERE IS THAT WE UNDERSTAND

04:05PM 5   WHAT TECHNOLOGY WE WANT TO CREATE. AND THE SECOND PIECE WAS

04:05PM 6   ALSO BUILDING A PROCESS AROUND IT SO THAT THE TECHNOLOGY WILL

04:05PM 7   BE DEVELOPED.

04:05PM 8   Q.   AND IT SAYS SOFTWARE TECHNOLOGY STRATEGY COUNCIL AND

04:05PM 9   SOFTWARE BUSINESS STRATEGY COUNCIL.

04:05PM 10   CAN YOU BRIEF HE DESCRIBE TO THE JURY WHAT THOSE COUNCILS

04:05PM 11   WERE?

04:05PM 12   A.   SOFTWARE TECHNOLOGY STRATEGY COUNCIL WAS A GROUP OF PEOPLE

04:06PM 13   I WAS CHAIRING THAT COUNCIL. A GROUP OF PEOPLE WHO WERE

04:06PM 14   DEFINING THE SOFTWARE STRATEGY FROM A TECHNOLOGY PERSPECTIVE.

04:06PM 15   AND THEN THE OTHER COUNCIL WAS, OKAY, ONCE, NOW THAT THE

04:06PM 16   STRATEGY IS CREATED, HOW DO WE MAKE SURE THAT IT BECOMES

04:06PM 17   OPERATIONAL, AND GETS INTO THE PRODUCTS.

04:06PM 18   Q.   LET'S TAKE A LOOK AT THE NEXT SLIDE IN THIS DOCUMENT.

04:06PM 19   SO IT'S A LITTLE BIT HARD TO READ AT THE BOTTOM. CAN YOU

04:06PM 20   WALK US THROUGH WHAT YOU WERE DESCRIBING ON THIS SLIDE.

04:06PM 21   A.   SO WHAT THIS SLIDE IS DESCRIBING IS A SET OF THINGS WHICH

04:06PM 22   WE WERE WORKING ON IN 2007 TO BUILD A SOFTWARE STRATEGY. SO

04:06PM 23   YOU CAN THINK OF IT AS AN ARCHITECTURE WHERE WANTED TO GET THE

04:06PM 24   TECHNOLOGIES WHICH WE WANTED TO BUILD IN OUR PRODUCTS.

04:06PM 25   Q.   OKAY. AND JUST TO THE REMIND THE JURY, THIS IS

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:06PM 1   EXHIBIT 4327, CORRECT?

04:06PM 2   A.   YES.

04:06PM 3   Q.   OKAY. SO LET'S GO, SO FOR EXAMPLE, YOU HAVE SOMETHING

04:07PM 4   CALLED COMMON LINUX STRATEGY FOR IMBEDDED SYSTEMS, CAN YOU TELL

04:07PM 5   US A LITTLE BIT MORE ABOUT THAT STRATEGY?

04:07PM 6   A.   SO IN 2007 WE WERE STARTING TO BUILD PRODUCTS USING LINUX

04:07PM 7   AS THE BASIC UNDERLYING OPERATING SYSTEM ON OUR PRODUCT.

04:07PM 8   AND WHAT WAS HAPPENING AT THAT POINT OF TIME WAS THAT EVERY

04:07PM 9   PRODUCT GROUP WAS DEVELOPING ITS OWN LINUX ALL DOWNLOADING

04:07PM 10   LINUX AND DOING WHATEVER THEY NEEDED TO DO, AND WANTED TO HAVE

04:07PM 11   A CONSISTENT STORY FOR A COMMON LINUX, AND THAT'S BASICALLY

04:07PM 12   WHAT IT SAYS.

04:07PM 13   Q.   I THINK THE JURY HAS HEARD LINUX MAYBE INSIDE THE COURTROOM

04:07PM 14   TODAY AND PERHAPS OUTSIDE THE COURTROOM. CAN YOU BRIEFLY

04:07PM 15   DESCRIBE FOR US WHAT IS LINUX?

04:07PM 16   A.   SO LINUX IS AN OPERATING SYSTEM WHICH RUNS ON MOST OF THE

04:07PM 17   SERVERS IN THE DATA CENTER. TODAY, 90 PLUS PERCENT OF THE

04:07PM 18   WEBSITES RUN ON LINUX OPERATING SYSTEM. AND IT'S AN OPEN

04:07PM 19   SOURCE OPERATING SYSTEM WHICH MEANS IT'S FREELY AVAILABLE,

04:08PM 20   PEOPLE CAN USE IT.

04:08PM 21   Q.   OKAY. AND SO LOOKING AT THE NEXT SLIDE, SLIDE OR ACTUALLY

04:08PM 22   THIS IS SLIDE 36, MR. FISHER.

04:08PM 23   NEXT GENERATION OPERATING SYSTEM. AND THEN THERE'S A SET

04:08PM 24   OF DIAGRAMS THERE.

04:08PM 25   CAN YOU BRIEFLY DESCRIBE WHAT YOU WERE SHOWING ON THIS

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:08PM 1   SLIDE?

04:08PM 2   A.   SO THIS SLIDE WAS THE OVERALL ARCHITECTURE FOR NEXT

04:08PM 3   GENERATION OPERATING SYSTEMS, WHICH WE TALKED ABOUT IOS XE, IOS

04:08PM 4   XR AND NX-OS.

04:08PM 5   THERE ARE THREE OUR FOUR BIG POINTS WHICH ARE HERE. IF YOU

04:08PM 6   LOOK AT THE LOWEST BLOCK, IT SAYS COMMON LINUX. WE ALREADY

04:08PM 7   TALKED ABOUT THAT. WE WANTED ALL OUR OPERATING SYSTEMS TO

04:08PM 8   START USING LINUX AS THE BASIC OPERATING SYSTEM.

04:08PM 9   IF YOU GO ON THE TOP MOST BLOCK, MANAGEMENT FRAMEWORK, WE

04:08PM 10   WANTED TO HAVE A CONSTANT COMMON MANAGEMENT ACROSS ALL OF OUR

04:09PM 11   MODULES TO BASICALLY PROVIDE ONE COMMON MANAGEMENT FRAMEWORK.

04:09PM 12   AND THEN IF YOU GO IN THE MIDDLE, THE MODULAR PROCESSES, WE

04:09PM 13   BASICALLY WANTED TO BRING THE MODULARITY INTO ALL OUR OPERATING

04:09PM 14   SYSTEMS. AND THEN IF WE LOOK AT THE LEFT MOST COLUMN WHICH IS

04:09PM 15   IOS, WE WANTED TO MAKE SURE THAT ALL THE FEATURES OF IOS

04:09PM 16   FEATURE FUNCTIONALITY CAN BE SUPPORTED.

04:09PM 17   Q.   AND DO YOU KNOW WHETHER ANY OF THE CISCO OPERATING SYSTEMS

04:09PM 18   AT ISSUE IN THIS CASE INCORPORATE THE COMMON LINUX AS THE

04:09PM 19   PLATFORM?

04:09PM 20   A.   YES, THEY DO.

04:09PM 21   Q.   AND WHICH ONES?

04:09PM 22   A.   ALL OF THE OPERATING SYSTEMS HAVE COMMON LINUX FRAMEWORK.

04:09PM 23   Q.   THAT'S IOS, IOS XR, IOS XE AND NX-OS?

04:09PM 24   A.   IOS IS NOT THE ONE, IOS XE AND NX-OS AND IOS XR.

04:09PM 25   Q.   SO IOS DOES NOT, BUT THE OTHER THREE DO?

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:09PM 1   A.   YES, THEY DO.

04:09PM 2   Q.   THANK YOU.

04:09PM 3   AND THEN THERE'S SOME INTERESTING LANGUAGE HERE, "NO MORE

04:10PM 4   POWER SUCKING ALIENS," CAN YOU TELL US WHAT YOU WERE TRYING TO

04:10PM 5   EXPLAIN WITH THAT TERMINOLOGY?

04:10PM 6   A.   THIS IS AN INTERNET JOKE.

04:10PM 7   SO IF YOU LOOK IN THE RIGHT-HAND SIDE, IT SAYS SERVICES,

04:10PM 8   VOICE, CONTENT, FIREWALL. AND IN THE PAST, WHAT WE USED TO DO

04:10PM 9   IS HAVE A SEPARATE HARDWARE RUNNING IT, BUT WE BASICALLY USED

04:10PM 10   TO PUT IT INTO A COMMON CHASSIS, BUT THERE WAS NO MANAGEMENT

04:10PM 11   INTEGRATION.

04:10PM 12   SO SINCE WE CREATED THE MANAGEMENT INTEGRATION FOR THOSE,

04:10PM 13   WE BASICALLY SAID, NO POWER SUCKING ALIEN.

04:10PM 14   Q.   OKAY, DID CISCO IMPLEMENT THE IDEAS THAT ARE DESCRIBED IN

04:10PM 15   THIS 2007 PRESENTATION?

04:10PM 16   A.   YES. ALL OF THESE IDEAS WERE IMPLEMENTED IN THE THREE

04:10PM 17   OPERATING SYSTEMS WHICH WE JUST TALKED ABOUT, IOS XE, IOS XR,

04:10PM 18   AND NX-OS, AND MOST OF THEM ARE SHIPPING.

04:10PM 19   Q.   AS THE CHIEF SOFTWARE ARCHITECT OR NETWORK ARCHITECT, CAN

04:10PM 20   YOU TELL US A LITTLE BIT ABOUT THE ENGINEERING CULTURE WITHIN

04:11PM 21   CISCO?

04:11PM 22   A.   THE CISCO ENGINEERING CULTURE IS VERY INNOVATIVE AND WE ARE

04:11PM 23   VERY CRITICAL TO OURSELVES. COMPLETELY ALL THE TIME LOOKING AT

04:11PM 24   HOW TO DO BETTER, BOTH WITH THE CULTURE AND THE PRODUCT.

04:11PM 25   Q.   AND ARE THERE TIMES WHEN AS AN ENGINEERING CULTURE YOU LOOK

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04:11PM 1   AT YOURSELVES AND SAY WE COULD BE DOING A BETTER JOB THIS IS AN

04:11PM 2   AREA FOR IMPROVEMENT?

04:11PM 3   A.   WE DID THAT ALL THE TIME.   AND WE CONTINUOUSLY IMPROVE.

04:11PM 4   Q.   AND SO LET'S TALK ABOUT SOME OF CISCO'S INNOVATIONS.   ARE

04:11PM 5   YOU FAMILIAR WITH THIS CONCEPT OF AUTO PROVISIONING OR ZERO

04:11PM 6   TOUCH PROVISIONING?

04:11PM 7   A.   YES.

04:11PM 8   Q.   AND DID YOU HAVE ANY PERSONAL EXPERIENCE WITH THAT

04:11PM 9   TECHNOLOGY?

04:11PM 10   A.   YES.   I BASICALLY KNEW ABOUT THAT TECHNOLOGY IN 2009.

04:11PM 11   Q.   OKAY.   AND HOW DID YOU BECOME AWARE OF CISCO'S VERSION OF

04:12PM 12   AUTO OR ZERO TOUCH PROVISIONING?

04:12PM 13   A.   AT THAT POINT IN TIME I WAS THE CHIEF TECHNOLOGY OFFICER

04:12PM 14   FOR INTERNET SWITCHING BUSINESS, AND THAT'S WHERE THIS

04:12PM 15   TECHNOLOGY WAS USED A LOT.

04:12PM 16   Q.   OKAY.   AND DO YOU HAVE AN UNDERSTANDING OF HOW EARLIER IN

04:12PM 17   TIME THAT TECHNOLOGY WAS DEVELOPED?

04:12PM 18   A.   I BELIEVE IT STARTED WORKING ON THAT TECHNOLOGY AROUND

04:12PM 19   2004.

04:12PM 20   Q.   AND DOES CISCO HAVE PATENTS ON ITS VERSION OF ZERO TOUCH

04:12PM 21   PROVISIONING?

04:12PM 22   A.   MY UNDERSTANDING IS THAT THERE ARE A FEW PATENTS ON THAT

04:12PM 23   TECHNOLOGY.

04:12PM 24   Q.   OKAY.   AND GENERALLY SPEAKING, DO YOU HAVE AN UNDERSTANDING

04:12PM 25   OF HOW MANY PATENTS CISCO HAS OVERALL?

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:12PM 1   A.   I CAN'T -- IT'S VERY DIFFICULT TO GIVE YOU A NUMBER BECAUSE

04:12PM 2   I JUST FOUND OUT WE RECEIVED 20 PATENTS YESTERDAY. SO GIVING A

04:12PM 3   NUMBER IS VERY DIFFICULT.

04:12PM 4   Q.   ARE YOU AWARE OF SOMETHING CALLED PROGRAMATIC INTERFACES?

04:12PM 5   A.   YES.

04:12PM 6   Q.   AND WHAT ARE PROGRAMATIC INTERFACES?

04:13PM 7   A.   SO WE TALKED A LOT ABOUT CLI. AND CLI IS TYPICALLY AN

04:13PM 8   INTERFACE FOR HUMAN TO INTERACT WITH MACHINES, BECAUSE IT'S A

04:13PM 9   TEXT-BASED, YOU TYPE A COMMAND, THE RESPONSE COMES BACK, TEXT

04:13PM 10   RESPONSE COMES BACK.

04:13PM 11   PROGRAMATIC INTERFACES IS WHEN MACHINES CAN TALK TO

04:13PM 12   MACHINES. SO IF YOU HAVE A LOT OF DEVICES, YOU REALLY DON'T

04:13PM 13   WANT TO GO ON TO EVERY DEVICE AND TYPE THOSE COMMANDS, YOU WANT

04:13PM 14   TO HAVE A PROGRAMATIC INTERFACE TO GO CONFIGURE ALL THOSE

04:13PM 15   DEVICES SIMULTANEOUSLY.

04:13PM 16   Q.   AND HAS CISCO BEEN WORKING ON ITS PROGRAMMATIC CISCO

04:13PM 17   TECHNOLOGY?

04:13PM 18   A.   CISCO HAS BEEN WORKING ON ITS PROGRAMMATIC INTERFACE

04:13PM 19   TECHNOLOGY, I BELIEVE FROM 2000, 2004, MAYBE EVEN WORKING

04:13PM 20   BEFORE. WE HAVE BEEN DOING LOT OF WORK. BUT THE THING IS,

04:13PM 21   THIS TECHNOLOGY ALSO HAS BEEN CHANGING AS THE TIME GOES ON.

04:13PM 22   OKAY. AND WE HAVE BEEN KEEPING UP AS THE NEW TECHNOLOGY COMES

04:13PM 23   UP INTO DIFFERENT MARKET SPACES, WE EVALUATE IT, MAKE SURE THAT

04:14PM 24   IT MAKES SENSE FOR NETWORKING MARKET THEN BRING IT INTO

04:14PM 25   NETWORKING MARKET.

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:14PM 1   Q.   ARE YOU AS PART OF THIS PROGRAMATIC INTERFACE CONCEPT, YOU

04:14PM 2   FAMILIAR WITH USING XML OH, XMPP TO SEND CLI COMMANDS?

04:14PM 3   A.   I'M AWARE OF USING XML TO SEND THE CLI COMMANDS, AND I

04:14PM 4   BELIEVE WE HAD SOMETHING CALLED WSMA, WHICH BASICALLY WAS

04:14PM 5   SHIPPING ON IOS WHICH SENDS THE CLI COMMANDS IN XML. AND FIRST

04:14PM 6   OR SECOND VERSION OF IOS XR DID THE SAME THING.

04:14PM 7   Q.   DO YOU RECALL THE GENERAL TIMEFRAME OF WHETHER THAT

04:14PM 8   TECHNOLOGY WAS RELEASED?

04:14PM 9   A.   EARLY 2000.

04:14PM 10   Q.   OKAY. AND DO YOU KNOW WHETHER CISCO HAS PATENTS ON ITS XML

04:14PM 11   AND CLI TECHNOLOGIES?

04:14PM 12   A.   THERE ARE A FEW PATENTS, BUT I DON'T KNOW EXACTLY WHICH

04:14PM 13   ONE.

04:14PM 14   Q.   SO STEPPING BACK, DO YOU THINK THAT CISCO PRODUCTS ARE

04:15PM 15   INFERIOR TO ARISTA PRODUCTS WHEN IT COMES TO DATA CENTER

04:15PM 16   SWITCHING?

04:15PM 17   MR. FERRALL: OBJECTION. FOUNDATION.

04:15PM 18   THE COURT: SUSTAINED.

04:15PM 19   BY MR. PAK:

04:15PM 20   Q.   DO YOU HAVE AN UNDERSTANDING OF ARISTA PRODUCTS, SIR?

04:15PM 21   A.   I UNDERSTAND A LITTLE BIT OF ARISTA PRODUCTS, YES.

04:15PM 22   Q.   AND HOW DO YOU UNDERSTAND ARISTA PRODUCTS?

04:15PM 23   A.   SOME OF THE DISCUSSION HAPPENED FOR PREPARING FOR THIS

04:15PM 24   TESTIMONY.

04:15PM 25   Q.   SETTING ASIDE THE CASE, HAVE YOU EVER SEEN ANY MARKETING

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:15PM 1   MATERIALS ABOUT ARISTA'S TECHNOLOGY?

04:15PM 2   A.   VERY LITTLE.

04:15PM 3   Q.   OKAY. SO IN THIS CASE LET ME ASK IT THIS WAY, CISCO'S

04:15PM 4   PRODUCTS, ARE YOU AWARE WHETHER CISCO'S PRODUCTS HAVE RECEIVED

04:15PM 5   ANY AWARDS?

04:15PM 6   A.   CISCO'S PRODUCTS RECEIVE NUMEROUS AWARDS. AGAIN, I CAN

04:15PM 7   DEFINE TWO OF THEM. IN 2014 WE RECEIVED BEST OF INTEROP FOR

04:15PM 8   ONE OF OUR PRODUCTS, WHICH GOES INTO THE DATA CENTER WHICH IS

04:15PM 9   NEXUS 9000.

04:15PM 10   IN 2016 WE AGAIN RECEIVED THE BEST OF INTEROP AWARD IN THE

04:16PM 11   DATA CENTER CATEGORY FOR A PRODUCT TO CONFIGURE LARGE AMOUNT OF

04:16PM 12   SWITCHES AUTOMATICALLY.

04:16PM 13   Q.   OKAY. AND WHEN YOU SAY IT'S INTEROP IT'S I-N-T-E-R-O-P; IS

04:16PM 14   THAT CORRECT?

04:16PM 15   A.   YES.

04:16PM 16   Q.   CAN YOU TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT THAT

04:16PM 17   IS?

04:16PM 18   A.   THAT'S A BIG TRADE SHOW WHERE A LOT OF COMPUTER NETWORKING

04:16PM 19   TECHNOLOGY PEOPLE COME AND DEMONSTRATE THEIR PRODUCTS OR SHOW

04:16PM 20   THEIR PRODUCTS TO THE PUBLIC.

04:16PM 21   Q.   AND WHAT DOES IT MEAN TO WIN BEST OF INTEROP?

04:16PM 22   A.   THAT BASICALLY MEANS THAT THE PRODUCT IS BEST IN THAT

04:16PM 23   CATEGORY. THERE ARE MULTIPLE JUDGES WHO EVALUATE THE PRODUCT.

04:16PM 24   THEY LOOK AT THE RECOMMENDATIONS FROM CUSTOMERS AND EVERYTHING

04:16PM 25   ELSE, SO IT'S REALLY A BIG DEAL.

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:16PM 1   Q.   OKAY.

04:16PM 2   MR. PAK: YOUR HONOR, AT THIS POINT I WOULD LIKE TO

04:16PM 3   PASS THE WITNESS.

04:16PM 4   THE COURT: OKAY.

04:16PM 5   CROSS-EXAMINATION, MR. FERRALL.

04:17PM 6   MR. FERRALL: BEAR WITH ME A MOMENT, PLEASE.

04:17PM 7   MAY I APPROACH, YOUR HONOR?

04:17PM 8   THE COURT: YES.

04:17PM 9

04:17PM 10   **CROSS-EXAMINATION BY MR. FERRALL**

04:17PM 11

04:17PM 12   BY MR. FERRALL:

04:17PM 13   Q.   GOOD AFTERNOON, MR. KATHAIL?

04:18PM 14   A.   GOOD AFTERNOON.

04:18PM 15   Q.   WE HAVE NOT MET BEFORE, HAVE WE?

04:18PM 16   A.   NO.

04:18PM 17   Q.   MY NAME IS BRIAN FERRALL, I'M ONE OF ARISTA'S ATTORNEYS,

04:18PM 18   AND I WANT TO START WITH SOME OF THE DOCUMENTS THAT COUNSEL FOR

04:18PM 19   CISCO SHOWED YOU. WHY DON'T WE -- IF WE COULD PULL UP

04:18PM 20   EXHIBIT 503, PLEASE.

04:18PM 21   THIS IS A DATA CENTER FOR OR A DESCRIPTION OF CISCO IOS XR,

04:18PM 22   RIGHT?

04:18PM 23   A.   YES.

04:18PM 24   Q.   AND I THINK YOU SAID THE DATE OF THIS IS 2015, RIGHT?

04:18PM 25   A.   SOMEWHERE AROUND -- NO, I SAID SOMEWHERE AROUND 2005, 2006.

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:18PM 1   Q.   OH, I'M SORRY, I GUESS I'M LOOKING AT A DATE AT THE BOTTOM.

04:19PM 2   SO THIS IS 2005, 2006?

04:19PM 3   A.   YES.

04:19PM 4   Q.   AND ON THE BOTTOM OF THE FIRST PAGE, IF WE COULD FOCUS IN

04:19PM 5   ON THAT, UNDER MANAGEABILITY, CISCO EXPLAINS TO THE READERS OF

04:19PM 6   THIS THAT CISCO IOS XR SOFTWARE MANAGEABILITY PROVIDES INDUSTRY

04:19PM 7   STANDARD MANAGEMENT INTERFACES INCLUDING MODULAR COMMAND-LINE

04:19PM 8   INTERFACE, RIGHT?

04:19PM 9   A.   YES.

04:19PM 10   Q.   OKAY.   AND IN THE NEXT DOCUMENT YOU LOOKED AT, LET'S LOOK

04:19PM 11   AT EXHIBIT 504.   IF WE COULD GO TO PAGE 5 UNDER "ENHANCED

04:19PM 12   USABILITY AND FAMILIAR OPERATION."

04:19PM 13   MR. KATHAIL, THIS IS A PUBLIC DOCUMENT, RIGHT?

04:19PM 14   A.   YES.

04:20PM 15   Q.   THIS IS MEANT TO INFORM THE NETWORKING INDUSTRY, IF YOU

04:20PM 16   WILL, HOW CISCO FEELS ABOUT ITS OR THE IMPORTANT FEATURES AND

04:20PM 17   ASPECTS OF CISCO'S OPERATING SYSTEM, RIGHT?

04:20PM 18   A.   YES.

04:20PM 19   Q.   AND CISCO EXPLAINS WITH REGARD TO THE NX-OS PRODUCT, IT

04:20PM 20   SORT OF HAS A TWO PART EXPLANATION, RIGHT, IN THE FIRST TWO

04:20PM 21   PARAGRAPHS OF THIS SECTION?

04:20PM 22   A.   WHERE ARE YOU LOOKING AT?

04:20PM 23   Q.   WELL, WHAT I MEAN BY THAT IS FOR NX-OS, NX-OS HAD A LITTLE

04:20PM 24   BIT DIFFERENT COMMAND-LINE INTERFACE THAN IOS, RIGHT?

04:20PM 25   A.   YES, NX-OS COMMAND-LINE INTERFACE HAD IMPROVED OVER IOS.

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:20PM 1   Q.   IT IMPROVED. IT IMPROVED BUT ACTUALLY YOU FACED, MEANING

04:20PM 2   CISCO FACED SOME PROBLEMS BECAUSE NX-OS COMMAND-LINE INTERFACE

04:20PM 3   WAS DIFFERENT THAN IOS, RIGHT?

04:20PM 4   A.   SOME OF THE -- SOME OF OUR CUSTOMERS WANTED SIMILAR

04:21PM 5   INTERFACE ON IOS AS WELL AS ON NX-OS.

04:21PM 6   Q.   AND THAT WAS IMPORTANT ENOUGH FOR CUSTOMERS THAT CISCO WENT

04:21PM 7   OUT OF ITS WAY IN DESCRIBING THE NX-OS CLI TO SAY THAT IT'S

04:21PM 8   LIKE IOS, RIGHT, THAT'S WHAT'S CAPTURED HERE?

04:21PM 9   A.   WHAT BASICALLY THEY ARE SAYING IS THAT NX-OS PROVIDES A CLI

04:21PM 10   WHICH IS VERY SIMILAR TO IOS LIKE IOS CLI.

04:21PM 11   Q.   SO FIRST CISCO SAYS IN THE FIRST PARAGRAPH, THE CISCO IOS

04:21PM 12   CLI HAS ESSENTIALLY BECOME THE STANDARD FOR CONFIGURATION IN

04:21PM 13   THE NETWORKING INDUSTRY, RIGHT?

04:21PM 14   A.   YES.

04:21PM 15   Q.   AND THEN IT GOES ON TO TRY TO COMFORT CUSTOMERS TO SAY THAT

04:21PM 16   NX-OS IS PRETTY GOOD, IT'S PRETTY CLOSE TO THAT, RIGHT?

04:21PM 17   A.   YES.

04:21PM 18   Q.   NOW IF WE COULD LOOK AT EXHIBIT 494, PLEASE.

04:22PM 19   A.   NO YOURS OR CISCO'S?

04:22PM 20   Q.   SORRY, YOURS, CISCO'S.

04:22PM 21   A.   YES.

04:22PM 22   Q.   OKAY. I THINK YOU TESTIFIED THAT THIS WAS THE OFFICIAL

04:22PM 23   PRESS RELEASE THAT WENT OUT TO THE WORLD REGARDING IOS, RIGHT?

04:22PM 24   A.   YES.

04:22PM 25   Q.   AND THAT WAS ON THE 25TH ANNIVERSARY OF IOS?

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04:22PM 1   A.   YES.

04:22PM 2   Q.   AND WHAT CISCO SAID ON THE I GUESS SECOND TO LAST PAGE, IF

04:22PM 3   WE COULD GO THERE, I DON'T THINK COUNSEL FOR CISCO POINTED THIS

04:22PM 4   OUT, THE FIRST SENTENCE SAYS, IF THE SUCCESS OF A PRODUCT IS

04:22PM 5   MEASURED BY HOW MUCH IT IS IMITATED, THEN IOS HAS CLEARLY SHOWN

04:22PM 6   ITS STRENGTH?

04:22PM 7   A.   YES.

04:22PM 8   Q.   RIGHT, BECAUSE IOS SETS THE STANDARD BY WHICH COMPETITIVE

04:23PM 9   PRODUCTS ARE DESIGNED AND CONFIGURED, RIGHT?

04:23PM 10   A.   YES.

04:23PM 11   Q.   AND THEN MR. BION, WHO IS A SENIOR TECHNOLOGIST AT CISCO,

04:23PM 12   CORRECT?

04:23PM 13   A.   HE'S A SENIOR VP OF CISCO.

04:23PM 14   Q.   OKAY. AND HE GOES ON TO SAY, ANYONE WHO GOES TO CONFIGURE

04:23PM 15   A COMPETITOR'S PRODUCT FEELS VERY MUCH AT HOME?

04:23PM 16   A.   YES.

04:23PM 17   Q.   AND THAT WAS SOMETHING CISCO WAS PERFECTLY SATISFIED WITH,

04:23PM 18   RIGHT?

04:23PM 19   A.   YES.

04:23PM 20   Q.   THAT WAS GOOD FOR CISCO THAT CUSTOMERS OF CISCO COULD GO

04:23PM 21   FEEL AT HOME ON COMPETITOR'S PRODUCTS, RIGHT?

04:23PM 22   A.   YES.

04:23PM 23   Q.   TURNING TO YOUR TESTIMONY ABOUT THE NUMBER OF COMMANDS

04:23PM 24   ON -- WHICH PRODUCT WAS THAT?

04:23PM 25   A.   NEXUS 7000.

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:23PM 1   Q.   NEXUS 7000. HOW MANY COMMANDS ARE IN NX-OS IN TOTAL?

04:24PM 2   A.   I DO NOT KNOW THAT NUMBER.

04:24PM 3   Q.   YOU DIDN'T COUNT THAT?

04:24PM 4   A.   NO.

04:24PM 5   Q.   OKAY. DO YOU KNOW HOW MANY COMMANDS ARE IN IOS?

04:24PM 6   A.   AS I SAID THE NUMBER OF COMMANDS IN IOS CHANGE EVERY DAY.

04:24PM 7   AND WE TALKED ABOUT 14, 15,000 COMMANDS.

04:24PM 8   Q.   YEAH, IT WAS 16,000 AT LEAST SEVERAL YEARS AGO, RIGHT?

04:24PM 9   A.   PROBABLY.

04:24PM 10   Q.   AND IT PROBABLY IS GOING UP, RIGHT?

04:24PM 11   A.   EXACTLY.

04:24PM 12   Q.   OKAY. AND SO YOU SAID THERE WERE 1500 COMMANDS ON THE

04:24PM 13   NEXUS 7000, BY YOUR COUNT?

04:24PM 14   A.   YES.

04:24PM 15   Q.   AND IS IT FAIR TO SAY THAT EACH COMMAND RELATES TO A

04:24PM 16   FUNCTION?

04:24PM 17   A.   EACH COMMAND RELATES TO ONE OF THE FUNCTIONS IN THE SWITCH.

04:24PM 18   Q.   OKAY. SO AN OPERATING SYSTEM THAT HAD SIGNIFICANTLY MORE

04:24PM 19   THAN 1500 COMMANDS RUNNING ON THE SWITCH, THAT'S GOING TO BE A

04:24PM 20   SWITCH WITH MORE FUNCTIONS, RIGHT?

04:24PM 21   A.   THAT'S TRUE.

04:24PM 22   Q.   AND SO WOULD IT SURPRISE YOU TO KNOW THAT ARISTA'S SWITCH

04:25PM 23   ACTUALLY HAS WELL OVER 5,000 COMMANDS?

04:25PM 24   A.   I DON'T KNOW.

04:25PM 25   Q.   YOU DON'T KNOW ARISTA'S SWITCH?

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:25PM 1   A.   I DON'T KNOW HOW MANY COMMANDS HAVE THEIR OWN ARISTA

04:25PM 2   SWITCH.

04:25PM 3   Q.   LET'S LOOK AT EXHIBIT 4327.

04:25PM 4   I THINK YOU TESTIFIED REGARDING THIS EXHIBIT THAT CISCO HAS

04:25PM 5   NOW IMPLEMENTED LINUX IN ITS VARIOUS OPERATING SYSTEMS.

04:25PM 6   A.   YES.

04:25PM 7   Q.   AND THE BENEFIT OF THAT IS THAT LINUX IS AN OPEN SOURCE

04:25PM 8   OPERATING SYSTEM, RIGHT?

04:25PM 9   A.   YES.

04:25PM 10   Q.   OR OPERATING SYSTEM KERNEL, FAIR TO SAY, RIGHT?

04:25PM 11   A.   YES.

04:25PM 12   Q.   AND I THINK YOUR TESTIMONY WAS THAT MOST ARE SHIPPING,

04:25PM 13   THAT'S WHAT I HEARD YOU SAY; IS THAT RIGHT?

04:26PM 14   A.   I SAID IOS XE, IOS XR AND NX-OS IS SHIPPING.

04:26PM 15   Q.   OKAY. NOW IN 2007, NONE OF THOSE OPERATING SYSTEMS RAN

04:26PM 16   LINUX, RIGHT?

04:26PM 17   A.   PROBABLY -- THE PREDECESSOR TO IOS XE WAS RUNNING LINUX.

04:26PM 18   AND THE REST OF THE OPERATING SYSTEMS WERE NOT RUNNING LINUX

04:26PM 19   AND THAT'S WHY THE DISTRACT TOOL WAS CREATED.

04:26PM 20   Q.   RIGHT. IF YOU LOOK AT PAGE 26 OF THIS EXHIBIT, LINUX IN

04:26PM 21   USE AT CISCO TODAY, AND THERE'S A LIST OF OPERATING SYSTEMS

04:26PM 22   THERE, RIGHT?

04:26PM 23   A.   YES, YES.

04:26PM 24   Q.   AND NX-OS IS NOT RUNNING LINUX, RIGHT?

04:26PM 25   A.   SO NX-OS IS THE RENAMED DCOS SOFTWARE. SO WHEN IT SAYS

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:26PM 1   DCOS, THAT'S WHAT BECAME NX-OS. AND AT THE BOTTOM WHERE YOU

04:27PM 2   SEE IOS-SR, THAT WAS WHAT BECAME IOS XE.

04:27PM 3   Q.   DOESN'T IOS XR RUN QNX?

04:27PM 4   A.   SO HERE I SAID IOS-SR BECAME IOS XE. IOS XR STARTED WITH

04:27PM 5   QNX, BUT NOW IOS XR SHIPS WITH LINUX.

04:27PM 6   Q.   RIGHT. BUT WHEN IOS XR WAS ORIGINALLY DEVELOPED, IT RAN

04:27PM 7   QNX, NOT LINUX, RIGHT?

04:27PM 8   A.   YES, AT THAT TIME THE LINUX OPERATING SYSTEM WAS NOT MATURE

04:27PM 9   AND QNX WAS THE BASIC OPERATING SYSTEM.

04:27PM 10   Q.   AND QNX IS NOT AN OPEN SOURCE OPERATING SYSTEM, RIGHT?

04:27PM 11   A.   YES.

04:27PM 12   Q.   I THINK YOU GAVE SOME TESTIMONY ABOUT THE STATE OF THE

04:28PM 13   DRIVE FOR PROGRAMMABILITY?

04:28PM 14   A.   YES.

04:28PM 15   Q.   BY CUSTOMERS, RIGHT?

04:28PM 16   A.   YES.

04:28PM 17   Q.   CUSTOMERS ARE DRIVING THAT. AND AS RECENTLY AS 2014, YOUR

04:28PM 18   COLLEAGUES ADVISED YOU THAT ARISTA HAD THE BEST DEVICE

04:28PM 19   PROGRAMMABILITY?

04:28PM 20   A.   WHAT EXHIBIT ARE YOU REFERRING TO?

04:28PM 21   Q.   I'M LOOKING AT EXHIBIT 6736 IN CISCO'S BINDERS.

04:28PM 22   COULD WE CALL THAT UP, THAT'S IN EVIDENCE ALREADY.

04:28PM 23   THE COURT: DID YOU WANT TO PUT THAT ON THE SCREEN?

04:28PM 24   Q.   COULD WE FOCUS IN ON THE TOP.

04:29PM 25   THIS IS AN E-MAIL IN WHICH YOU ARE COPIED ON IN FEBRUARY OF

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:29PM 1   2014, RIGHT?

04:29PM 2   A.   YES.

04:29PM 3   Q.   AND KUMAR REDDY IS A COLLEAGUE OF YOURS AT CISCO, RIGHT?

04:29PM 4   A.   YES.

04:29PM 5   Q.   AND IT WAS HIS VIEW, AT LEAST AS OF FEBRUARY 2014, THAT

04:29PM 6   ARISTA HAS ARGUABLY THE BEST DEVICE PROGRAMMABILITY TODAY,

04:29PM 7   RIGHT?

04:29PM 8   A.   YES.

04:29PM 9   Q.   SO I WANT TO GO BACK AND TALK TO YOU NOW ABOUT SOME OF THE

04:29PM 10   CLI COMMAND ISSUES. YOU'VE WRITTEN A FEW CLI COMMANDS IN YOUR

04:29PM 11   TIME, CORRECT?

04:29PM 12   A.   YES.

04:29PM 13   Q.   BUT YOU DON'T REMEMBER WHICH ONES AT THIS POINT?

04:29PM 14   A.   THEY WERE SO FAR BACK, I REALLY DON'T REMEMBER.

04:29PM 15   Q.   ALL RIGHT. BUT YOUR VIEW ABOUT HOW TO WRITE A CLI COMMAND

04:30PM 16   IS THAT THEY SHOULD BE SELF EXPLANATORY, RIGHT?

04:30PM 17   A.   YES.

04:30PM 18   Q.   AND WHAT THAT MEANS IS THAT A CUSTOMER SHOULDN'T HAVE TO GO

04:30PM 19   RUN TO A DICTIONARY TO SEE WHAT THE COMMAND MEANS, RIGHT?

04:30PM 20   A.   THAT'S TRUE.

04:30PM 21   Q.   IN FACT, YOUR VIEW IS THAT THE COMMAND SHOULD COME FROM A

04:30PM 22   VOCABULARY WHICH NETWORKERS USE DAY IN AND DAY OUT?

04:30PM 23   A.   THAT'S TRUE.

04:30PM 24   Q.   THAT'S GOOD GUIDANCE FOR CLI COMMAND AND CREATION, RIGHT?

04:30PM 25   A.   THAT'S TRUE.

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:30PM 1   Q.   YOU AGREE WITH ME, MR. KATHAIL, THAT CERTAINLY SOME OF

04:31PM 2   CISCO'S COMPETITORS HOLD THEMSELVES OUT PUBLICLY AS HAVING A

04:31PM 3   CISCO-LIKE CLI, RIGHT?

04:31PM 4   A.   YES.

04:31PM 5   Q.   AND YOU KNOW THAT A COMPANY LIKE DELL, FOR EXAMPLE, HAS A

04:31PM 6   NUMBER OF COMMANDS THAT ARE SIMILAR TO IOS CLI COMMANDS, RIGHT?

04:31PM 7   A.   YES.

04:31PM 8   Q.   BUT YOU DON'T KNOW THE PRECISE NUMBER THAT ARE OVERLAPPING,

04:31PM 9   RIGHT?

04:31PM 10   A.   I DON'T KNOW THE EXACT NUMBER?

04:31PM 11   Q.   OKAY.   BUT YOUR VIEW IS WHATEVER THAT NUMBER IS, IT'S VERY

04:31PM 12   SMALL?

04:31PM 13   A.   YES.

04:31PM 14   Q.   SO -- AND IT'S SMALL ENOUGH, WHATEVER THAT NUMBER IS THAT

04:31PM 15   IS AN OVER LAP BETWEEN DELL AND CISCO, IT'S SMALL ENOUGH THAT

04:31PM 16   IT'S OF NO CONCERN TO CISCO, RIGHT?

04:31PM 17   A.   YES.

04:31PM 18   Q.   AND THAT'S THE SAME FOR BROCADE, CORRECT?

04:31PM 19   A.   YES.

04:31PM 20   Q.   AND FOR FOUNDRY?

04:32PM 21   A.   YES.

04:32PM 22   Q.   RIGHT?   AND OTHERS LIKE HP, CORRECT?

04:32PM 23   A.   YES.

04:32PM 24   Q.   LET'S LOOK AT EXHIBIT 5441, PLEASE.   MR. KATHAIL, DO YOU

04:32PM 25   RECOGNIZE THIS AS A DOCUMENT THAT WAS PRODUCED FROM CISCO'S

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:32PM 1   FILES?

04:32PM 2   A.   I WAS TOLD AT MY DEPOSITION SOMETHING ABOUT THE BATES AND

04:32PM 3   THAT CSI MEANING CISCO, SO I BELIEVE SO.

04:32PM 4   Q.   DO YOU HAVE ANY REASON TO DOUBT THAT THIS CAME FROM CISCO'S

04:32PM 5   FILES?

04:32PM 6   A.   I DON'T KNOW HOW IT WAS PRODUCED, IT WAS JUST TOLD TO ME,

04:33PM 7   SO I BELIEVE IT WAS PRODUCED.

04:33PM 8   Q.   YOU WERE DESIGNATED IN THIS CASE BY CISCO TO TESTIFY

04:33PM 9   REGARDING CERTAIN SUBJECTS, INCLUDING INDUSTRY STANDARD

04:33PM 10   DOCUMENTS, RIGHT?

04:33PM 11   A.   YES.

04:33PM 12   Q.   OKAY. AND YOU RECOGNIZE THIS AS ONE OF THE DOCUMENTS YOU

04:33PM 13   TESTIFIED ABOUT IN YOUR DEPOSITION, RIGHT?

04:33PM 14   A.   YES, I DID.

04:33PM 15   MR. FERRALL: YOUR HONOR, I WOULD LIKE TO OFFER

04:33PM 16   EXHIBIT 5441 IN EVIDENCE.

04:33PM 17   THE COURT: ANY OBJECTION?

04:33PM 18   MR. PAK: NO OBJECTION, YOUR HONOR.

04:33PM 19   THE COURT: IT WILL BE ADMITTED.

04:33PM 20   (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 5441, HAVING BEEN

04:33PM 21   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

04:33PM 22   EVIDENCE.)

04:33PM 23   BY MR. FERRALL:

04:33PM 24   Q.   THIS IS A PRESENTATION FROM NORTEL, RIGHT?

04:33PM 25   A.   YES.

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:33PM 1   Q.   AND THEY OFFER NETWORKING PRODUCTS, CORRECT?

04:33PM 2   A.   YES.

04:33PM 3   Q.   AND THIS APPEARS TO BE DATED ON THE SECOND PAGE, I THINK,

04:33PM 4   IT'S THE SECOND PAGE, LOOKS LIKE IT'S AUGUST 2005, RIGHT.

04:33PM 5   A.   YES.

04:33PM 6   Q.   AND ON THE NEXT PAGE, YOU SEE NORTEL ADVERTISING ITSELF AS

04:34PM 7   HAVING WHAT APPEARS TO BE TWO CLI'S, INCLUDING A CISCO-LIKE

04:34PM 8   ONE, RIGHT?

04:34PM 9   A.   YES.

04:34PM 10   Q.   AND YOU'RE NOT AWARE OF SOMEONE AT CISCO OBJECTING WHEN

04:34PM 11   THEY'VE HAD THIS DOCUMENT IN THEIR POSSESSION, THAT NORTEL'S

04:34PM 12   GOT A CISCO LIKE CLI, RIGHT?

04:34PM 13   A.   TRUE, I'M NOT AWARE OF ANY ACTION.

04:34PM 14   Q.   BY THE WAY, CISCO WOULD GATHER INFORMATION ON COMPETITOR'S

04:34PM 15   PRODUCTS, RIGHT?

04:34PM 16   A.   YES.

04:34PM 17   Q.   THAT'S FAIR GAME IN COMPETITION, CORRECT?

04:34PM 18   A.   YES.

04:34PM 19   Q.   SO LET'S LOOK AT ANOTHER DOCUMENT 5444. IF YOU COULD OPEN

04:34PM 20   THAT UP IN YOUR BINDER, PLEASE.

04:34PM 21   A.   YEP.

04:34PM 22   Q.   THIS IS ANOTHER DOCUMENT YOU TESTIFIED TO IN YOUR

04:34PM 23   DEPOSITION, RIGHT?

04:34PM 24   A.   YES.

04:35PM 25   Q.   AND IT COMES FROM CISCO'S FILES, CORRECT?

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:35PM 1   A.   YES.

04:35PM 2   Q.   OKAY. THANK YOU?

04:35PM 3   MR. FERRALL: YOUR HONOR, I WOULD OFFER 5444 IN

04:35PM 4   EVIDENCE, PLEASE.

04:35PM 5   MR. PAK: NO OBJECTION, YOUR HONOR.

04:35PM 6   THE COURT: IT WILL BE ADMITTED.

04:35PM 7   (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 5444, HAVING BEEN

04:35PM 8   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

04:35PM 9   EVIDENCE.)

04:35PM 10   BY MR. FERRALL:

04:35PM 11   Q.   THIS IS AN HP PRODUCT DATA SHEET, CORRECT?

04:35PM 12   A.   YES.

04:35PM 13   Q.   AND IF WE LOOK AT THE THIRD PAGE OF THIS DOCUMENT UNDER THE

04:35PM 14   HEADING MANAGEMENT?

04:35PM 15   A.   YES, I CAN SEE THAT.

04:35PM 16   Q.   THE SECOND BULLET, HP, SORRY I WILL WAIT UNTIL THAT COMES

04:35PM 17   UP, HP ALSO ADVERTISED ITS PRODUCT AS HAVING AN INDUSTRY

04:35PM 18   STANDARD CLI?

04:35PM 19   A.   YES.

04:35PM 20   Q.   WITH A HIERARCHICAL STRUCTURE?

04:35PM 21   A.   YES.

04:35PM 22   Q.   OKAY. AND THIS DOCUMENT, ACCORDING TO THE COPYRIGHT AT

04:36PM 23   LEAST ON THE LAST PAGE, APPEARS TO BE IN THE 2012 RANGE, IF YOU

04:36PM 24   LOOK AT THAT LAST PAGE.

04:36PM 25   A.   YES, IT SAYS 2010, 2012.

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:36PM 1   Q.   OKAY. AND MR. KATHAIL, THERE'S MANY DOCUMENTS LIKE THIS

04:36PM 2   FROM OTHER VENDORS, AREN'T THERE?

04:36PM 3   A.   YES.

04:36PM 4   Q.   YOU'VE SAW THEM AND YOU KNOW THAT THEY'RE OUT THERE, RIGHT?

04:36PM 5   A.   YES.

04:36PM 6   Q.   AND SO LET'S TALK ABOUT SOME INTERNAL DOCUMENTS THEN. IF

04:36PM 7   YOU COULD LOOK AT 5786 IN YOUR BINDER.

04:37PM 8   A.   YES.

04:37PM 9   Q.   THIS IS AN INTERNAL CISCO, ACTUALLY, I TAKE THAT BACK, THIS

04:37PM 10   IS A CISCO PREPARED PRESENTATION, CORRECT?

04:37PM 11   A.   I DON'T GET WHAT YOU MEAN BY CISCO-PREPARED PRESENTATION.

04:37PM 12   Q.   WELL, IT'S A PRESENTATION THAT CISCO GAVE TO ONE OF ITS

04:37PM 13   CUSTOMERS REGARDING IOS, RIGHT?

04:37PM 14   A.   YES.

04:37PM 15   Q.   AND THE CUSTOMER IS AT&T, RIGHT?

04:37PM 16   A.   YES, THE PRESENTATION WAS GIVEN UNDER NONDISCLOSURE.

04:37PM 17   Q.   UNDER NONDISCLOSURE. OKAY. SO THIS WAS A CONFIDENTIAL

04:37PM 18   PRESENTATION GIVEN TO AT&T?

04:37PM 19   A.   THAT'S WHAT I ASSUMED, GIVEN THE STAMP ON THE PRESENTATION.

04:37PM 20   Q.   OKAY.

04:37PM 21   MR. FERRALL: I WOULD LIKE TO MOVE EXHIBIT 5786 IN

04:37PM 22   EVIDENCE.

04:37PM 23   MR. PAK: YOUR HONOR, NO OBJECTION.

04:37PM 24   THE COURT: IT WILL BE ADMITTED.

04:37PM 25

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:37PM 1   (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 5786, HAVING BEEN

04:37PM 2   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

04:37PM 3   EVIDENCE.)

04:37PM 4   BY MR. FERRALL:

04:38PM 5   Q.   SO MR. KATHAIL, CISCO WOULD HAVE MEETINGS WITH CUSTOMERS

04:38PM 6   LIKE AT&T UNDER NONDISCLOSURE AGREEMENTS?

04:38PM 7   A.   YES.

04:38PM 8   Q.   AND THAT WAY THEY COULD BE CANDID WITH THEIR CUSTOMERS AND

04:38PM 9   TELL THEM SOME MORE DETAIL ABOUT THEIR SYSTEM, RIGHT?

04:38PM 10 A.   YES.

04:38PM 11 Q.   AND THIS HAPPENED IN 2003, RIGHT?

04:38PM 12 A.   YES.

04:38PM 13 Q.   AND IF WE LOOK AT, IT'S A LITTLE HARD IT SEE THE PAGE

04:38PM 14 NUMBER, BUT IT'S, I THINK IT'S 96. THE HEADING IS CISCO IOS

04:38PM 15 CONFIGURATION INTERFACE, THE STORY?

04:38PM 16 A.   YES, I SEE IT.

04:38PM 17 Q.   AND HERE, WHAT CISCO WAS DOING WAS TALKING TO AT&T ABOUT

04:38PM 18 THE NEED FOR A PROGRAMATIC INTERFACE; IS THAT FAIR?

04:39PM 19 A.   YES.

04:39PM 20 Q.   AND THAT'S -- THAT'S A MORE AUTOMATED WAY TO CONFIGURE THE

04:39PM 21 SWITCH THAN JUST TYPING IN WORDS IN A COMMAND LINE, RIGHT?

04:39PM 22 A.   THAT'S TRUE.

04:39PM 23 Q.   ALL RIGHT. AND WHAT CISCO SAID ABOUT THE CLI IS THAT IT'S

04:39PM 24 THE CURRENT DE FACTO STANDARD?

04:39PM 25 A.   THAT'S TRUE.

1096

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:39PM   1   Q.   AND THEN THIS DISCUSSION WOULD GO ON AND TALK ABOUT OTHER

04:39PM   2   ALTERNATIVES THAT CISCO WAS WORKING ON, RIGHT?

04:39PM   3   A.   YES.

04:39PM   4   Q.   OKAY. AND THAT'S THE WAY CISCO TREATED ITS CLI WAS AS THE

04:39PM   5   CURRENT DE FACTO STANDARD?

04:39PM   6   A.   THIS DOCUMENT IS SAYING THAT CLI ITSELF IS A DE FACTO

04:39PM   7   STANDARD, NOT THE CISCO IOS COMMAND LINE OR ARE THE DE FACTO

04:39PM   8   STANDARD.

04:39PM   9   Q.   SO WHEN THE DOCUMENT SAYS, CISCO IOS CLI CURRENT DE FACTO

04:40PM   10   STANDARD, THAT DOESN'T MEAN THAT THE IOS CLI IS THE CURRENT DE

04:40PM   11   FACTO STANDARD?

04:40PM   12   A.   THIS DOCUMENT WAS CREATED IN THE CONTEXT OF THE

04:40PM   13   PROGRAMMABILITY, SO IF YOU LOOK AT THERE ARE PROS AND CONS IN

04:40PM   14   THE CONTEXT OF THIS SLIDE WAS LOOK, EVERYBODY IS USING CLI

04:40PM   15   TODAY TO CONFIGURE THE BOXES, AND WHAT YOU NEED TO DO IS MOVE

04:40PM   16   AWAY FROM CLI, MORE PROGRAMATIC, AS YOU SAID, LIKE SNMP OR XML.

04:40PM   17   Q.   SO MORE RECENTLY, CISCO HAS--YOU'VE BEEN A PROPONENT OF

04:40PM   18   DEVELOPING MORE PROGRAMMABLE COMMUNICATIONS, MORE PROGRAMMABLE

04:40PM   19   INTERFACES, RIGHT?

04:40PM   20   A.   YES. THE INDUSTRY HAS EVOLVED AND WE NEED TO EVOLVE WITH

04:40PM   21   THE INDUSTRY.

04:40PM   22   Q.   AND IT'S IMPORTANT AMONG THE EVOLUTION IN THE INDUSTRY IT'S

04:41PM   23   IMPORTANT TO DEVELOP SOME BETTER INTERFACE THAN JUST TYPING IN

04:41PM   24   A COMMAND LINE, RIGHT?

04:41PM   25   A.   YES.

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:41PM 1   Q.   AND SO IF YOU COULD LOOK AT TAB 5472, PLEASE. THIS IS A

04:41PM 2   PRESENTATION YOU AUTHORED AT CISCO, RIGHT?

04:41PM 3   A.   YES.

04:41PM 4   MR. FERRALL: AND YOUR HONOR, I MOVE EXHIBIT 5472 IN

04:41PM 5   EVIDENCE.

04:41PM 6   MR. PAK: NO OBJECTION, YOUR HONOR.

04:41PM 7   THE COURT: IT WILL BE ADMITTED.

04:41PM 8   (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 5742, HAVING BEEN

04:41PM 9   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

04:41PM 10   EVIDENCE.)

04:41PM 11   BY MR. FERRALL:

04:41PM 12   Q.   SO MR. KATHAIL, IN 2013, YOU WERE CONTEMPLATING A WORLD

04:41PM 13   WITHOUT CLI, RIGHT?

04:41PM 14   A.   YES.

04:41PM 15   Q.   AND THIS IS PART OF THE LARGER PICTURE OF THE WORLD OF

04:41PM 16   NETWORKING THAT CISCO WAS LIVING IN IN 2013 AND BEYOND, RIGHT?

04:42PM 17   A.   EXACTLY, THIS WAS A SOFTWARE STRATEGY OF WHERE WE WANT TO

04:42PM 18   END UP AND WHERE THE INDUSTRY WILL BE.

04:42PM 19   Q.   NOW ONE OF CISCO'S STRATEGIES TO DEAL WITH THE DEMAND FOR

04:42PM 20   INCREASED PROGRAMMABILITY WAS ITS STINT KNOWN AS INSIEME,

04:42PM 21   RIGHT?

04:42PM 22   A.   WE HAD A SPIN IN CALLED INSIEME, BUT I DON'T KNOW WHETHER

04:42PM 23   THAT WAS FOR PROGRAMMABILITY OR SOMETHING ELSE.

04:42PM 24   Q.   LET'S JUST CLARIFY SPIN IN, IS THIS CORPORATE TRANSACTION

04:42PM 25   WHERE INSTEAD OF SPINNING OUT YOU ACTUALLY SPIN THE COMPANY IN

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:42PM 1   TO CISCO, RIGHT?

04:42PM 2   A.   YES.

04:42PM 3   Q.   AND YOU KNOW CISCO ULTIMATELY PAID A TOTAL OF A BILLION

04:42PM 4   DOLLARS OR SO FOR INSIEME?

04:42PM 5   A.   I'M NOT AWARE OF HOW MUCH MONEY WAS PAID.

04:43PM 6   Q.   ALL RIGHT. IF YOU COULD LOOK AT EXHIBIT 7956, PLEASE.

04:43PM 7   DO YOU RECOGNIZE THIS E-MAIL -- LET ME ASK YOU, ARE YOU ON

04:43PM 8   THE CLUELESS E-MAIL LIST?

04:44PM 9   A.   YES, I AM.

04:44PM 10   Q.   AND DO YOU SEE ON THIS EXHIBIT THAT THE CLUELESS MAILING

04:44PM 11   LIST HAS, IS INCLUDED IN THE CC, IT'S TOWARDS THE BOTTOM OF THE

04:44PM 12   LIST?

04:44PM 13   A.   I BELIEVE YOU, YES.

04:44PM 14   Q.   OKAY. ALL RIGHT.

04:44PM 15   MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 7956

04:44PM 16   IN EVIDENCE.

04:44PM 17   MR. PAK: NO OBJECTION, YOUR HONOR.

04:44PM 18   THE COURT: IT WILL BE ADMITTED.

04:44PM 19   (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 7956, HAVING BEEN

04:44PM 20   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

04:44PM 21   EVIDENCE.)

04:44PM 22   BY MR. FERRALL:

04:44PM 23   Q.   THIS IS A LONG E-MAIL EXCHANGE, RIGHT?

04:44PM 24   A.   I'M SEEING THIS E-MAIL FOR THE FIRST TIME. CLUELESS IS A

04:44PM 25   MAILING LIST A LOT OF PEOPLE SUBSCRIBE. IT DOESN'T MEAN THAT

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:44PM 1   EVERYBODY READS EVERY E-MAIL COMING ON CLUELESS.

04:44PM 2   Q.   ALL RIGHT. WELL, LET ME JUST DIRECT YOU TO ONE PART THEN,

04:44PM 3   AND IF YOU CAN HELP ME, GREAT, IF NOT, WE WILL MOVE ON.

04:44PM 4   FIRST OF ALL, THIS E-MAIL IS DATED AUGUST 2013; DO YOU SEE

04:45PM 5   THAT?

04:45PM 6   A.   YES.

04:45PM 7   Q.   AND THE RE: LINE IS "TECH EXECUTIVES FACING UP TO HARD

04:45PM 8   REALITIES OF THE CLOUD," RIGHT?

04:45PM 9   A.   YES, THAT'S THE SUBJECT.

04:45PM 10   Q.   OKAY. IF WE COULD FLIP FORWARD, OR BACKWARDS, SORRY, 2, 3,

04:45PM 11   4, I THINK IT'S ON PAGE 5 TOWARDS THE TOP. AND ACTUALLY, LET'S

04:45PM 12   GO TO THE PREVIOUS PAGE WHERE WE COULD SEE THE AUTHOR OF THIS.

04:45PM 13   DO YOU KNOW A KEITH SWALLOW?

04:45PM 14   A.   I DON'T KNOW KEITH.

04:45PM 15   Q.   YOU DON'T KNOW HIM. OKAY.

04:45PM 16   IF WE GO TO THE PAGE 5 AT THE TOP. LET ME JUST ASK YOU,

04:45PM 17   MR. KATHAIL. IT APPEARS MR. SWALLOW WRITES, "WE ARE QUICKLY

04:46PM 18   BECOMING THE OLD CRUSTY NETWORK GUYS IN OUR ACCOUNTS. THE NEW

04:46PM 19   GENERATION THAT IS COMING INTO THE WORK FORCE DOESN'T CARE

04:46PM 20   ABOUT CLI, THEY WANT EASY TO USE AND THEY WANT FUNCTIONAL."

04:46PM 21   DO YOU SEE THAT?

04:46PM 22   A.   YES.

04:46PM 23   Q.   DOES THAT SENTIMENT SOUND FAMILIAR TO YOU AS OF THE

04:46PM 24   2013/2014 TIMEFRAME?

04:46PM 25   A.   THE PEOPLE ARE LOOKING FOR PROGRAMMABLE INTERFACES AND

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:46PM 1   THAT'S WHAT THIS SENTIMENT IS ABOUT.

04:46PM 2   Q.   LET ME ASK YOU TO LOOK AT ONE MORE DOCUMENT EXHIBIT 7977?

04:47PM 3   THIS IS AN E-MAIL EXCHANGE BETWEEN YOU AND A FEW COLLEAGUES

04:47PM 4   AT CISCO, CORRECT?

04:47PM 5   A.   YES.

04:47PM 6   Q.   AND THIS IS IN FEBRUARY OF 2014?

04:47PM 7   A.   YES.

04:47PM 8   MR. FERRALL: I MOVE EXHIBIT 7977 IN EVIDENCE.

04:47PM 9   MR. PAK: NO OBJECTION YOUR HONOR.

04:47PM 10   THE COURT: IT WILL BE ADMITTED.

04:47PM 11   (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 7977, HAVING BEEN

04:47PM 12   PREVIOUSLY MARKED FOR IDENTIFICATION, WAS ADMITTED INTO

04:47PM 13   EVIDENCE.)

04:47PM 14   BY MR. FERRALL:

04:47PM 15   Q.   IN THIS E-MAIL YOU START BY SEEKING SOME INFORMATION ABOUT

04:47PM 16   MODELLING OR MODELS, RIGHT, THAT'S --

04:47PM 17   A.   YES.

04:47PM 18   Q.   AND THAT'S A FORM OF THIS PROGRAMMABILITY THAT'S GOING ON

04:47PM 19   IN THE NETWORKING FIELD, CORRECT?

04:47PM 20   A.   THAT'S THE NEW FORM OF THE PROGRAMMABILITY WE JUST STARTED

04:47PM 21   ABOUT 18 MONTHS AGO.

04:47PM 22   Q.   OKAY. AND ONE OF YOUR COLLEAGUES RESPONDS AT THE BOTTOM OF

04:47PM 23   THE FIRST PAGE OF THIS, A MR. SUNIL, GUHDURVALMIKI. HE'S A

04:48PM 24   COLLEAGUE OF YOURS, RIGHT?

04:48PM 25   A.   YES.

CROSS-EXAMINATION OF MR. KATHAIL BY MR. FERRALL

04:48PM 1 Q.   AND MR. SUNIL, I'M NOT GOING TO TRY MY LUCK AGAIN, HE

04:48PM 2 WRITES AT THE BOTTOM OF THE PAGE THAT CUSTOMERS ARE NOT ASKING

04:48PM 3 FOR COMMON DATA MODELS, BUT RATHER ARE THEY ARE ASKING FOR

04:48PM 4 CONSISTENT PROGRAMATIC INTERFACES, RIGHT?

04:48PM 5 A.   YES.

04:48PM 6 Q.   AND THEN HE GOES ON TO SAY IN DC SEGMENT, THAT'S DATA

04:48PM 7 CENTER?

04:48PM 8 A.   YES.

04:48PM 9 Q.   RECENT BIG LOSSES FOR LACK OF PROGRAMMABILITY, BOX.NET AND

04:48PM 10 FACEBOOK, RIGHT?

04:48PM 11 A.   YES.

04:48PM 12 Q.   ARE YOU FAMILIAR WITH CISCO LOSSES AT BOX.NET AND FACEBOOK?

04:48PM 13 A.   I WAS NOT FAMILIAR WITH THOSE.

04:48PM 14 Q.   OKAY. THEN HE GOES ON AND SAYS NOW WE ARE BATTLING ARISTA

04:48PM 15 AND PRETTY MUCH ALL THE ACCOUNTS ON THE PROGRAMMABILITY FRONT.

04:49PM 16   DO YOU SEE THAT?

04:49PM 17 A.   YES.

04:49PM 18 Q.   AND THAT WAS -- THAT WAS NOT NEWS TO YOU, YOU KNEW ARISTA

04:49PM 19 WAS BATTLING CISCO ON PROGRAMMABILITY, RIGHT?

04:49PM 20 A.   WE WERE WORKING AT THE PROGRAM ACT AT THIS POINT IN TIME,

04:49PM 21 YES.

04:49PM 22 Q.   OKAY.

04:49PM 23   MR. FERRALL: ALL RIGHT.

04:49PM 24   NO FURTHER QUESTIONS, YOUR HONOR.

04:49PM 25   THE COURT: ALL RIGHT. LET'S SEE IF WE CAN FINISH

04:49PM 1   UP.

04:49PM 2   MR. PAK: I THINK WE SHOULD BE ABLE TO, YOUR HONOR.

04:49PM 3   THE COURT: ALL RIGHT.

04:49PM 4   THAT WOULD BE GREAT.

04:49PM 5   REDIRECT?

04:49PM 6

04:49PM 7   **REDIRECT EXAMINATION BY MR. PAK**

04:49PM 8

04:49PM 9   BY MR. PAK:

04:49PM 10   Q.   LET'S START FROM SOME OF THE RECENT TOPICS THAT MR. FERRALL

04:49PM 11   ASKED YOU ABOUT. WE SAW SOME DOCUMENTS TALKING ABOUT

04:49PM 12   PROGRAMMABLE INTERFACES IN A WORD WITHOUT CLI, ARE WE LIVING IN

04:49PM 13   A WORLD TODAY WITHOUT CLI?

04:49PM 14   A.   NO, WE ARE NOT. THE WAY YOU LOOK AT THEM, IT'S A STRATEGY

04:49PM 15   PRESENTATION WHICH I DID IN 2007, IT TOOK US SOME TIME TO REACH

04:49PM 16   IT. THE REASON THE WORLD WITHOUT CLI PRESENTATION WAS CREATED

04:50PM 17   IS WE WANTED TO START NOW BECAUSE WE KNOW THAT IN 2020, 2021,

04:50PM 18   THAT WOULD BE A REALITY AND WE NEED TO START WORKING NOW.

04:50PM 19   Q.   SO TODAY AND GOING BACK IN TIME TO 2011, 2012 WHEN ARISTA

04:50PM 20   WAS COMPETING WITH CISCO, WAS CLI AN IMPORTANT FACTOR IN TERMS

04:50PM 21   OF THE USER INTERFACE OF THE SWITCHING AND ROUTER PRODUCTS?

04:50PM 22   A.   CLI WAS AN IMPORTANT FACTOR AND IT STILL IS AN IMPORTANT

04:50PM 23   FACTOR FOR ALL THE SWITCHES AND ROUTERS.

04:50PM 24   Q.   NOW I WANT TO LOOK AT SOME OF THE DOCUMENTS THAT

04:50PM 25   MR. FERRALL SHOWED YOU, SO LET'S TAKE A LOOK AT, I BELIEVE THIS

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:50PM 1   IS EXHIBIT 7956.

04:50PM 2   JUST TO BE CLEAR, YOU DON'T KNOW MR. KEITH SWALLOW WHO WAS

04:50PM 3   MENTIONED, CORRECT?

04:50PM 4   A.   I DON'T REMEMBER HIM.

04:50PM 5   Q.   OKAY. IF WE JUST LOOK BACK THE PAGE BEFORE HE WROTE IN THE

04:50PM 6   MIDDLE OF THAT, MR. FISHER, THERE'S A, IF YOU KEEP GOING DOWN,

04:51PM 7   THIS WOULD BE 003 THERE'S SOMETHING CALLED RANT. 003. YEP.

04:51PM 8   THIS IS THE BEGINNING OF THAT E-MAIL THAT MR. SWALLOW HAD

04:51PM 9   WRITTEN.

04:51PM 10   SO DO YOU SEE THAT, IT SAYS RANT?

04:51PM 11   A.   YES.

04:51PM 12   Q.   WHAT DOES THAT MEAN?

04:51PM 13   A.   THAT BASICALLY MEANS THAT SOMEONE IS COMPLAINING. HE

04:51PM 14   DOESN'T HAVE A FACTUAL BASIS TO SOMETHING.

04:51PM 15   Q.   OKAY. AND AGAIN, YOU CAN HAVE PROGRAMMABLE INTERFACES AND

04:51PM 16   HAVE CLI IN THE SAME PRODUCT, IS THAT TRUE?

04:51PM 17   A.   YES. AND MOST OF THE CUSTOMERS TODAY REQUIRE BOTH OF THEM.

04:51PM 18   Q.   BASED ON YOUR EXPERIENCE, WHAT IS CURRENTLY THE MOST

04:51PM 19   IMPORTANT INTERFACE IN TERMS OF TROUBLE SHOOTING, CONFIGURING

04:51PM 20   AND DOING ALL THE DIFFERENT THINGS ON SWITCHES AND ROUTERS?

04:52PM 21   A.   CLI IS THE MOST USED INTERFACE FOR TROUBLE SHOOTING SOME OF

04:52PM 22   THE COMPUTING TODAY.

04:52PM 23   Q.   AND ALSO THERE WAS SOME QUESTIONS ASKED ABOUT, THERE WAS A

04:52PM 24   GENTLEMAN WHO SAID IN 2014 HE BELIEVED THAT ARISTA HAD SOME OF

04:52PM 25   THE BETTER DEVICE PROGRAMMABILITY INTERFACES; DO YOU RECALL

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:52PM   1   THAT?

04:52PM   2   A.   YES.

04:52PM   3   Q.   AND NOW AS A CHIEF NETWORK ARCHITECT, YOU HAVE VISIBILITY

04:52PM   4   INTO MANY, MANY OF THE PROJECTS THAT CISCO WORKS ON AN

04:52PM   5   ORGANIZATIONAL LEVEL; IS THAT TRUE?

04:52PM   6   A.   YES.

04:52PM   7   Q.   AND SO IN YOUR PROFESSIONAL ASSESSMENT, DO YOU BELIEVE THAT

04:52PM   8   YOU ARE BEHIND ANY COMPANY IN TERMS OF PROGRAMMABILITY AND

04:52PM   9   INTERFACE TECHNOLOGIES?

04:52PM 10   A.   NO.   WE HAVE BEEN WORKING ON THE PROGRAMABILITY SINCE 2004.

04:52PM 11   TECHNOLOGY HAS EVOLVED SINCE 2004 AND WE HAVE BEEN KEEPING UP

04:52PM 12   WITH THE TECHNOLOGY.

04:52PM 13   WE JUST TALKED ABOUT THE DATA MODELS AND THAT'S THE NEW

04:52PM 14   TECHNOLOGY THAT STARTED 18 MONTHS AGO AND WE ARE ALREADY

04:53PM 15   IMPLEMENTING IT IN OUR PRODUCTS.

04:53PM 16   Q.   AND SIR, JUST GOING BACK TO SOME OF YOUR EARLIER TESTIMONY

04:53PM 17   THAT WE DISCUSSED, JUST TO BE CLEAR ON BEHALF OF CISCO, DOES

04:53PM 18   CISCO HAVE ANY PROBLEMS WITH VENDORS USING COMMON ELEMENTS OF A

04:53PM 19   COMMAND-LINE INTERFACE SUCH AS THE IDEA OF HAVING HELP

04:53PM 20   DESCRIPTIONS OR INTERACTIVE ABILITY TO GO AND LOOK AT DIFFERENT

04:53PM 21   KINDS OF COMMANDS OR TAB COMPLETIONS, DOES CISCO HAVE ANY

04:53PM 22   PROBLEMS WITH THAT?

04:53PM 23   A.   I DON'T BELIEVE SO.

04:53PM 24   Q.   OKAY.   NOW, DOES CISCO BELIEVE THAT IT'S PROPER FOR ANOTHER

04:53PM 25   COMPANY TO COME IN AND COPY COMMANDS, USER INTERFACE OUTPUTS,

REDIRECT EXAMINATION OF MR. KATHAIL BY MR. PAK

04:53PM 1   HELP DESCRIPTIONS, MANUALS, IS THAT SOMETHING THAT CISCO

04:53PM 2   BELIEVES IS PROPER FOR ANOTHER COMPANY --

04:53PM 3   MR. FERRALL: OBJECTION. FOUNDATION. AND

04:53PM 4   ARGUMENTATIVE.

04:53PM 5   THE COURT: SUSTAINED.

04:53PM 6   BY MR. PAK:

04:53PM 7   Q. DO YOU BELIEVE THAT CISCO HAS A POLICY OF PROMOTING THE

04:53PM 8   COPYING OF A CISCO CLI INTERFACE DOWN TO ITS COMMAND SYNTAX AND

04:53PM 9   USER OUTPUTS?

04:54PM 10   MR. FERRALL: SAME OBJECTION, YOUR HONOR.

04:54PM 11   THE COURT: OVERRULED.

04:54PM 12   THE WITNESS: NO. NOT AT ALL.

04:54PM 13   BY MR. PAK:

04:54PM 14   Q. AND WHY NOT?

04:54PM 15   A. BECAUSE WE BELIEVE THAT THE ENVIRONMENT SHOULD BE COMMON

04:54PM 16   THINGS LIKE TAB AND HELP STRING AND EVERYTHING ELSE. BUT WHEN

04:54PM 17   IT COMES TO INDIVIDUAL COMMANDS, PEOPLE SHOULD BE DEFINES THOSE

04:54PM 18   AND INNOVATING THOSE, YES.

04:54PM 19   MR. PAK: THANK YOU VERY MUCH FOR YOUR TESTIMONY.

04:54PM 20   I DON'T HAVE ANYMORE QUESTIONS, YOUR HONOR.

04:54PM 21   THE COURT: MR. FERRALL, ANYTHING ELSE FOR THIS

04:54PM 22   WITNESS?

04:54PM 23   MR. FERRALL: JUST ON EXHIBIT 7956.

04:54PM 24

04:54PM 25

RECROSS-EXAMINATION BY MR. FERRALL

04:54PM 1

04:54PM 2

04:54PM 3   BY MR. FERRALL:

04:54PM 4   Q.   UNDER THAT RANT?

04:54PM 5   A.   OKAY. YEP, I SEE IT.

04:54PM 6   Q.   YEAH. CAN WE PULL THAT UP. I THINK THE THIRD PAGE.

04:55PM 7   SO SINCE IT'S A RANT, DO YOU AGREE WITH MR. SWALLOW WHEN HE

04:55PM 8   WRITES, NO DEFENSE TO OUR DEVELOPMENT FOLKS BUT THE CLI IS AN

04:55PM 9   ARCHAIC DINOSAUR FROM THE PAST?

04:55PM 10 A.   IN GENERAL, THE INDUSTRY IS MOVING AWAY FROM CLI, BUT I

04:55PM 11 BELIEVE IT IS NOT AN ARCHAIC DINOSAUR, PEOPLE ARE STILL USING

04:55PM 12 CLI A LOT. AND CLI IS STILL THE COMMON MECHANISM ON WHICH HOW

04:55PM 13 ETHERNET SWITCHES ARE CONFIGURED.

04:55PM 14   MR. FERRALL: THANK YOU. THANK YOU, MR. KATHAIL.

04:55PM 15   THE COURT: ANYTHING ELSE.

04:55PM 16   MR. PAK: THAT'S IT YOUR HONOR.

04:55PM 17   THE COURT: MR. KATHAIL, THANK YOU FOR YOUR

04:55PM 18 TESTIMONY. YOU ARE FREE TO GO.

04:55PM 19   THE WITNESS: THANK YOU VERY MUCH, AND SORRY FOR

04:55PM 20 BEING FAST.

04:55PM 21   THE COURT: ALL RIGHT. WELL, EVEN I'M NOT GOING TO

04:55PM 22 MAKE YOU BRING IN ANOTHER WITNESS WITH FOUR MINUTES LEFT,

04:55PM 23 ALTHOUGH I'M PRETTY STRICT.

04:55PM 24   OKAY. WE'VE REACHED THE END OF OUR COURT DAY. TOMORROW,

04:55PM 25 LADIES AND GENTLEMEN, WE ARE BEGINNING AT 1:00, SO YOU GET THAT

04:55PM 1   MORNING TO GET BACK TO ALL THE THINGS THAT ARE PILING UP AT

04:55PM 2   HOME AND AT WORK.

04:56PM 3   AND I WILL SEE YOU -- WE WILL GET STARTED PROMPTLY AT 1:00

04:56PM 4   TOMORROW. THANK YOU. AND YOU ARE FREE TO GO.

04:56PM 5   (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD OUT OF THE

04:56PM 6   PRESENCE OF THE JURY:)

04:56PM 7   THE COURT: ALL RIGHT. WE ARE -- PLEASE BE SEATED

04:56PM 8   EVERYONE. WE ARE BACK ON THE RECORD OUTSIDE THE PRESENCE OF

04:57PM 9   THE JURY. HOUSEKEEPING MATTERS?

04:57PM 10   MR. PAK: YES, YOUR HONOR. I DO HAVE ONE SCHEDULING

04:57PM 11   ISSUE WITH RESPECT TO A WITNESS.

04:57PM 12   WE HAVE JUNIPER WHICH IS A THIRD PARTY, AND WE HAVE BOTH, I

04:57PM 13   THINK BOTH PARTIES HAVE SERVED A TRIAL SUBPOENA ON JUNIPER.

04:57PM 14   WE HAVE BEEN ALSO NEGOTIATING ON SOME VIDEO DEPOSITION

04:57PM 15   TESTIMONY IN CASE GENE PER WITNESS IS NOT AVAILABLE TO TESTIFY.

04:57PM 16   BUT THEY ARE ACTUALLY AVAILABLE TO TESTIFY LIVE IN THIS CASE

04:57PM 17   AND WE HAVE A WITNESS, MR. SCHAFER, WHO IS THE COMPANY

04:57PM 18   REPRESENTATIVE OF JUNIPER.

04:57PM 19   THE COURT: THAT WAS ONE WAS DEPOSITIONS I NEEDED TO

04:57PM 20   LOOK AT.

04:57PM 21   MR. PAK: CORRECT, YOUR HONOR.

04:57PM 22   SO HE IS AVAILABLE TO TESTIFY ON DECEMBER 6TH WHICH IS NEXT

04:57PM 23   WEEK ON TUESDAY. AND THE ISSUE IS THERE'S A POSSIBILITY THAT

04:57PM 24   WE MAY CLOSE OUR CASE ON MOST LIKELY MONDAY OF NEXT WEEK.

04:57PM 25   THE COURT: YES, I WOULD ASSUME SO BECAUSE JUST BY

04:57PM 1   COUNTING THE HOURS.

04:57PM 2   MR. PAK: YES, SO WE ARE STARTING TO GET TO THAT

04:57PM 3   POINT. SO WE WANTED TO ASK FOR YOUR HONOR'S PERMISSION TO PUT

04:57PM 4   ON MR. SCHAFER WHEN HE IS AVAILABLE ON DECEMBER 6TH, WHICH IS

04:58PM 5   NEXT TUESDAY, TO ACCOMMODATE THE THIRD-PARTY WITNESS'S

04:58PM 6   AVAILABILITY.

04:58PM 7   MR. VAN NEST: AND YOUR HONOR, I WOULD LIKE TO PASS

04:58PM 8   THIS.

04:58PM 9   MR. PAK JUST MENTIONED THIS TO ME AN HOUR OR SO AGO. WE

04:58PM 10   HAVE A NUMBER OF DISAGREEMENTS ABOUT LIVE AND BY VIDEO DEPOS.

04:58PM 11   WE HAVE BEEN WORKING VERY HARD WITH THEM TO CUT SOME VIDEOS

04:58PM 12   THAT THEY WANTED, ONLY TO LEARN THAT THEY NOW DON'T WANT TO

04:58PM 13   PLAY THE VIDEOS. SO I'M KIND OF UPSET ABOUT OUR STATUS.

04:58PM 14   I WOULD LIKE TO CONSULT WITH MY TEAM, I WOULD LIKE TO

04:58PM 15   CONSULT WITH MR. PAK AND WE CAN TAKE THIS UP AGAIN TOMORROW AT

04:58PM 16   1:00, OR 12:30.

04:58PM 17   THE COURT: YOU WILL BE HERE AT 12:30, THAT'S

04:58PM 18   CORRECT.

04:58PM 19   SO YOU GAVE ME THE DEPOSITION THINGS TWO DAYS IN ADVANCE,

04:58PM 20   SO I WAS GOING TO BE READY ON THEM TOMORROW MORNING.

04:58PM 21   SO MR. SCHAFER, I BELIEVE THERE ARE OBJECTIONS AS TO

04:58PM 22   MR. SCHAFER'S DEPOSITION?

04:58PM 23   MR. PAK: I DON'T THINK HIS TESTIMONY WILL BE

04:58PM 24   NECESSARY BECAUSE HE WILL BE COMING LIVE TO TRIAL.

04:58PM 25   MR. VAN NEST: WE MAY BE OBJECTING TO THAT. I

04:58PM 1   CERTAINLY WON'T OBJECT TO THEM PLAYING IT ON MONDAY IF THEY

04:58PM 2   PLAY THE VIDEO.

04:58PM 3   THE COURT: IT WAS VERY FEW OBJECTIONS, IT WON'T TAKE

04:59PM 4   ME VERY LONG, BUT I JUST WANT TO MAKE SURE I'M NOT BEHIND.

04:59PM 5   MR. PAK: SURE, YOUR HONOR. WE CAN RESOLVE THE VIDEO

04:59PM 6   DEPOSITION OBJECTIONS IF YOUR HONOR PREFERS, TOMORROW AT 12:30.

04:59PM 7   BUT THE REQUEST THAT WE ARE MAKING IS THAT WE HAVE A LIVE

04:59PM 8   WITNESS WHO IS SUBJECT TO TRIAL SUBPOENA.

04:59PM 9   THE COURT: WELL, YOU KNOW, I MEAN, CERTAINLY TIME

04:59PM 10   EXPENDED ON THE VIDEO CLIPS TAKES AWAY FROM OTHER PREPARATION,

04:59PM 11   I CAN CERTAINLY APPRECIATE THAT THAT IS NOT HELPFUL TO THE

04:59PM 12   ARISTA TEAM.

04:59PM 13   BUT MR. VAN NEST, I DON'T KNOW OF ANY AUTHORITY THAT I HAVE

04:59PM 14   TO PREVENT A LIVE WITNESS FROM COMING TO COURT IN LIEU OF A

04:59PM 15   DEPOSITION.

04:59PM 16   SO --

04:59PM 17   MR. VAN NEST: WELL, THE SITUATION IS A LITTLE BIT

04:59PM 18   UNUSUAL, YOUR HONOR.

04:59PM 19   WE HAVE BEEN NEGOTIATING ALL WEEK OVER VARIOUS WITNESSES,

04:59PM 20   SOME THAT WE WOULD LIKE TO PLAY BY VIDEO THAT THEY WANTED TO

04:59PM 21   PLAY BY VIDEO THAT WERE OTHERWISE AVAILABLE LIVE.

04:59PM 22   WE WORKED HARD ALL WEEK, WE FINALLY GOT THE CUTS READY, I

04:59PM 23   THINK LAST NIGHT, AND WE LEARNED THEY NO LONGER WANT IT, SO NOW

05:00PM 24   WE ARE BACK TO SQUARE ONE.

05:00PM 25   MR. PAK WALKED IN AN HOUR AGO AND TOLD ME ABOUT

05:00PM 1   MR. SCHAFER. SO HE'S ASKING YOUR HONOR TO INTERRUPT MY CASE

05:00PM 2   NEXT WEEK TO PUT A LIVE WITNESS ON THAT WANTS TO CALL, THAT'S

05:00PM 3   NOT SOMEBODY THAT I CARE ABOUT. THAT'S WHAT I WOULD LIKE TO

05:00PM 4   HAVE A CHANCE TO MEET AND CONFER ON IT.

05:00PM 5   THE COURT: AND THAT I UNDERSTAND. INTERRUPTING THE

05:00PM 6   DEFENSE CASE, YOU HAVE A LOT TO COVER, AND IT'S DISRUPTIVE TO

05:00PM 7   THE FLOW.

05:00PM 8   I THINK WE HAD SOME ISSUES PREVIOUSLY ABOUT BRINGING A --

05:00PM 9   WHETHER THE ADVERSE WITNESSES WOULD GIVE ALL OF THEIR TESTIMONY

05:00PM 10   DURING YOUR CASE IN CHIEF, AND I BELIEVE YOU OBJECTED TO THAT,

05:00PM 11   MR. PAK.

05:00PM 12   MR. VAN NEST: YES, HE DID.

05:00PM 13   THE COURT: AND THESE WITNESSES ARE COMING BACK, I

05:00PM 14   UNDERSTAND OR AT LEAST --

05:00PM 15   MR. VAN NEST: THEY ARE.

05:00PM 16   THE COURT: YOU HAVE TO CALL THEM BACK.

05:00PM 17   MR. VAN NEST: I WILL.

05:00PM 18   THE COURT: SO, YOU KNOW, I THINK MAYBE YOU CAN WORK

05:00PM 19   THIS OUT, BUT I, YOU KNOW, IF YOU HAD AN AGREEMENT AND THERE

05:00PM 20   WAS RELIANCE ON IT, I WILL NEED TO HEAR MORE ABOUT THAT.

05:00PM 21   MR. PAK: YES, ABSOLUTELY.

05:00PM 22   AND JUST TO BE CLEAR ON THE RECORD, I KNOW MR. VAN NEST WAS

05:00PM 23   NOT INVOLVED, BUT THERE HAVE BEEN A NUMBER OF CONVERSATIONS

05:01PM 24   WITH HIS TEAM AND JUNIPER'S LAWYER, THEY ACTUALLY SUBPOENAED

05:01PM 25   HIM, THEY WANTED HIM ON THEIR LIST. THEY TOLD US YESTERDAY

05:01PM   1   THAT THEY DON'T WANT JUNIPER TO TESTIFY LIVE IN THEIR CASE.

05:01PM   2   SO THIS IS A SITUATION WHERE BOTH PARTIES WERE TALKING TO

05:01PM   3   JUNIPER'S REPRESENTATIVE TO GET THEM TO COME LIVE TO TESTIFY

05:01PM   4   WITH RESPECT TO THE CASE. AND NOW THEY'VE CHANGED THEIR MIND,

05:01PM   5   BUT WE WOULD LIKE TO HAVE A WITNESS COME BECAUSE I THINK IT

05:01PM   6   WOULD BE HELPFUL.

05:01PM   7   MR. VAN NEST: HE'S COMING ANYWAY, YOUR HONOR.

05:01PM   8   HERE'S THE SITUATION, HE'S HERE ON BUSINESS IN CALIFORNIA.

05:01PM   9   HE'S NOT MAKING A SPECIAL TRIP FOR MR. PAK OR ME. THIS CAME UP

05:01PM   10   LAST NIGHT, FORTUITOUSLY HE'S HERE ANYWAY. WE DO NOT NEED TO

05:01PM   11   RESOLVE THIS TONIGHT. AND I DON'T APPRECIATE HAVING IT THRUST

05:01PM   12   ON ME IN THE AFTERNOON WITHOUT A CHANCE TO WORK ON IT.

05:01PM   13   THE COURT: OKAY. WHY DON'T YOU WORK ON THAT.

05:01PM   14   NOW I PRESUME DR. ALMEROTH, WE WILL GET TO HIM TOMORROW?

05:01PM   15   MR. PAK: YES.

05:01PM   16   THE COURT: AND THERE WERE A NUMBER OF ISSUES YOU

05:01PM   17   WERE GOING TO CONTINUE TO WORK ON, SO I WILL LEAVE THAT IN YOUR

05:01PM   18   HANDS.

05:01PM   19   MR. VAN NEST: RIGHT. MR. NELSON AND I NEED TO DO

05:01PM   20   THAT.

05:01PM   21   THE COURT: RIGHT.

05:01PM   22   AND WE HAVE ALL BEEN HERE ALL DAY, SO YOU CLEARLY HAVEN'T

05:01PM   23   DONE THAT YET.

05:02PM   24   SO I WILL SEE WHAT YOU HAVE, WE MAY BE ENOUGH BEHIND IF

05:02PM   25   THERE'S NOTHING MORE FOR TOMORROW, I DON'T KNOW. IT WILL JUST

05:02PM 1   BE FILED.

05:02PM 2   (OFF-THE-RECORD DISCUSSION.)

05:02PM 3   THE COURT: SO I MIGHT GET A BREAK. I WAS HOPING TO

05:02PM 4   WORK ON YOUR ANALYTIC DISSECTION ORDER.

05:02PM 5   MR. VAN NEST: WELL, IF WE NEED -- WE WILL BE HERE AT

05:02PM 6   12:30, AND WE MAY OR MAY NOT HAVE ANYTHING TO DISCUSS WITH

05:02PM 7   YOUR HONOR.

05:02PM 8   THE COURT: THAT'S FINE.

05:02PM 9   SO -- AND I WILL CERTAINLY BE HERE AT 12:30.

05:02PM 10   MR. VAN NEST: WE DON'T HAVE ANYTHING FOR YOU IN THE

05:02PM 11   MORNING BEFORE THAT.

05:02PM 12   THE COURT: RIGHT. NO, I'M UNAVAILABLE, I HAVE MY

05:02PM 13   CIVIL CALENDAR TOMORROW.

05:02PM 14   MR. NELSON: AND WITH RESPECT TO DR. ALMEROTH, WE

05:02PM 15   WILL SEND YOU THE E-MAIL, WHAT WE RESOLVED SO THAT YOU DON'T --

05:02PM 16   THE COURT: THAT WOULD BE GREAT.

05:02PM 17   WELL, MR. NELSON, WHAT I THINK I WAS TRYING TO CONVEY THIS

05:02PM 18   MORNING IS THAT ABSENT ARGUMENT, THERE'S NOTHING I CAN DO WITH

05:03PM 19   THE OBJECTIONS BECAUSE YOU HAVE TO DESCRIBE WHY YOU ARE

05:03PM 20   OFFERING THEM SO THAT I CAN THEN CONSIDER THEM.

05:03PM 21   IT'S A LONG AND TEDIOUS JOB, AND MR. VAN NEST SUGGESTED

05:03PM 22   THAT WITH FURTHER DISCUSSION YOU CAN REDUCE OR ELIMINATE THE

05:03PM 23   SCOPE OF THOSE DISAGREEMENTS.

05:03PM 24   SO YOU KNOW, I MADE A COMMENT ABOUT THE DOCUMENTS THAT

05:03PM 25   DR. ALMEROTH MIGHT GO OVER THAT MAY OR MAY NOT BE IN EVIDENCE

05:03PM 1   THAT ARE E-MAILS. THEY DON'T APPEAR TO BE THE SUBJECT OF

05:03PM 2   EXPERT TESTIMONY TO GO OVER WHAT THE FACT WITNESSES HAVE SAID,

05:03PM 3   OTHER THAN VOUCHING FOR THE FACT THAT IT'S ALL THERE.

05:03PM 4   SO I'M DISINCLINED TO ALLOW THAT FROM THAT COMMENT YOU WERE

05:03PM 5   GOING TO TAKE IT FROM THERE, AND DECIDE WHICH, IF ANY OF THOSE

05:03PM 6   YOU WILL CONTINUE TO PUT FORWARD.

05:03PM 7   THERE ARE A NUMBER OF EXHIBITS, HOWEVER, THAT I WAS REALLY

05:03PM 8   UNABLE TO DEAL WITH BECAUSE I DON'T KNOW WHAT PURPOSE THEY ARE

05:03PM 9   BEING OFFERED FOR.

05:03PM 10   MR. VAN NEST: RIGHT.

05:03PM 11   THE COURT: AND WE DIDN'T REALLY GET INTO THAT VERY

05:03PM 12   MUCH.

05:03PM 13   MR. VAN NEST: WE UNDERSTOOD YOUR REMARKS.

05:03PM 14   THE COURT: I KNOW YOU DID.

05:03PM 15   I THINK THAT TAKES CARE OF EVERYTHING TODAY THEN. AND I

05:04PM 16   WILL SEE YOU ALL AT 12:30 TOMORROW.

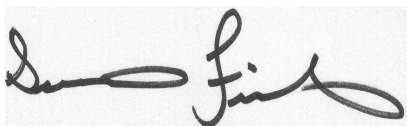05:04PM 17   MR. VAN NEST: THANK YOU, YOUR HONOR.

05:04PM 18   MR. PAK: THANK YOU, YOUR HONOR.

05:04PM 19   (WHEREUPON, THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)

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4   **CERTIFICATE OF REPORTER**

5

6

7

8   I, THE UNDERSIGNED OFFICIAL COURT

9   REPORTER OF THE UNITED STATES DISTRICT COURT FOR

10   THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH

11   FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY

12   CERTIFY:

13   THAT THE FOREGOING TRANSCRIPT,

14   CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND

15   CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS

16   SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS

17   HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED

18   TRANSCRIPTION TO THE BEST OF MY ABILITY.

19

20

21

22

23

24   _____

25   SUMMER A. FISHER, CSR, CRR
     CERTIFICATE NUMBER 13185   DATED: 11/30/16